

EXHIBIT A

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

LABOR PLUS, LLC

and

Case 28-CA-150723

**INTERNATIONAL ALLIANCE OF THEATRICAL
STAGE EMPLOYEES AND MOVING PICTURE
TECHNICIANS, ARTISTS AND ALLIED CRAFTS
OF THE UNITED STATES AND CANADA
LOCAL UNION 720 (IATSE)**

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by IATSE Local 720 affiliated with International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the US and Canada Local 720, whose correct name is International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada Local Union 720 (the Union). It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act), and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Labor Plus, LLC (Respondent) has violated the Act as described below.

1. The charge in this proceeding was filed by the Union on April 22, 2015, and a copy was served on Respondent by U.S. mail on April 23, 2015.
2. (a) At all material times, Respondent has been a limited liability company with an office and place of business in Las Vegas, Nevada, and has been engaged in the operation of payroll services.

(b) In conducting its operations during the 12-month period ending April 22, 2015, Respondent performed services valued in excess of \$50,000 in States other than the State of Nevada.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. At all material times, the Union has been a labor organization with the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors and agents of Respondent within the meaning of Section 2(13) of the Act:

| | | |
|--------------|---|----------------|
| Mike Long | - | Manager |
| Rita Taratko | - | Office Manager |

5. (a) About April 20, 2015, Respondent discharged its employees Collin Barnes, Johnathon Contini, Luke Cresson, Eric Fouts, John Gable, James Herlihy, Debbie Jensen-Miller, Timothy Karlsen, Heather Lewis, Hector Lugo, Josh Perrill, Brian Pomeroy, Bret Portzer, Christopher Portzer, Eric Shafter, William Stephenson, Doug Tate, Sr., Trent Utterback, David Weigant, and Kendall Zobrist.

(b) Respondent engaged in the conduct described above in paragraph 5(a) because the named employees of Respondent formed, joined, and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

6. By the conduct described above in paragraph 5, Respondent has been discriminating in regard to the hire or tenure or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

7. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practices alleged above in paragraph 5, the General Counsel seeks an order requiring that Respondent reimburse the discriminatees for all search-for-work and work-related expenses regardless of whether the discriminatees received interim earnings in excess of these expenses, or at all, during any given quarter, or during the overall backpay period. The General Counsel seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before July 14, 2015, or postmarked on or before July 13, 2015.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website

informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on September 1, 2015, at 9:00 a.m. (local time), at the Hearing Room of the National Labor Relations Board, 300 Las Vegas Boulevard South, Suite 2-901, Las Vegas, Nevada, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to

appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Phoenix, Arizona this 30th day of June 2015.



Cornele A. Overstreet, Regional Director

Attachments

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 28-CA-150723

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Labor Plus, LLC
5125 West Oquendo Road, Suite 14
Las Vegas, NV 89118-2838

Caren P. Sencer, Attorney
Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501-1091

IATSE Local 720
3000 South Valley View Boulevard
Las Vegas, NV 89102-7841

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.
- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

EXHIBIT B

FORM EXEMPT UNDER 44 U.S.C. 3512

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

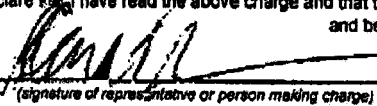
DO NOT WRITE IN THIS SPACE

Case CA-150723

Date Filed
April 22, 2015

INSTRUCTIONS:

File an original with NLRB Regional Director for the Region in which the alleged unfair labor practice occurred or is occurring

| 1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT | | |
|--|---|-------------------------------|
| a. Name of Employer Labor Plus, LLC | | b. Tel. No. 702 296-4326 |
| | | c. Cell No. |
| | | f. Fax No. |
| d. Address (Street, city, state, and ZIP code) 5125 West Oquendo Road, Suite 14 Las Vegas, NV 89118 | e. Employer Representative Rita Taratko, Labor Coordinator | g. e-Mail rta@laborpluslv.com |
| h. Number of workers employed 20+ | | |
| i. Type of Establishment (factory, mine, wholesaler, etc.) Entertainment Payroll | j. Identify principal product or service Payroll/Labor | |
| k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) subsections) (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act. | | |
| 2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) In the past six months the above-referenced employer has terminated all employees in response to a union organizing campaign. | | |
| 3. Full name of party filing charge (if labor organization, give full name, including local name and number) IATSE Local 720 | | |
| 4a. Address (Street and number, city, state, and ZIP code) 3000 S. Valley View, Las Vegas, NV 89102 | | 4b. Tel. No. 702 309-8052 |
| | | 4c. Cell No. |
| | | 4d. Fax No. 702 873-8120 |
| | | 4e. e-Mail |
| 5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Alliance of Theatrical Stage Employees and Moving Picture Technicians, Artists and Allied Crafts of US and Canada Local 720 | | |
| 6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief. By  Caren P. Sencer/Attorney (signature of representative or person making charge) (Print/type name and title or office, if any) | | Tel. No. 510 337-1001 |
| | | Office, if any, Cell No. |
| | | Fax No. 510 337-1023 |
| Address: 1001 Marina Village Parkway, Suite 200 Alameda, CA 94501 | | e-Mail |
| April 22, 2015 (date) | | |

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

1/808522

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

TOTAL P.02

EXHIBIT C

OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:

Labor Plus, LLC,

Case No. 28-RC-150168

Employer,

and

International Alliance of
Theatrical Stage Employees
and Moving Picture
Technicians, Artists and
Allied Crafts of the United
States and Canada, Local 720,

Petitioner.

Place: Las Vegas, Nevada

Dates: May 27, 2015

Pages: 1 through 243

Volume: 1

OFFICIAL REPORTERS

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Phoenix, AZ 85003
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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28

In the Matter of:
LABOR PLUS, LLC, Case No. 28-RC-150168
Employer,
and
INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES
AND MOVING PICTURE
TECHNICIANS, ARTISTS AND
ALLIED CRAFTS OF THE UNITED
STATES AND CANADA, LOCAL 720,
Petitioner.

The above-entitled matter came on for hearing, pursuant to notice, before STEPHANIE STROUP SCAFFIDI, Hearing Officer, at the National Labor Relations Board, Region 28, 600 Las Vegas Boulevard South, Suite 400, Las Vegas, Nevada 89101, on Wednesday, May 27, 2015, at 10:30 a.m.

APPEARANCES

On behalf of the General Counsel:
LARRY A. "TONY" SMITH, ESQ.
NATIONAL LABOR RELATIONS BOARD - REGION 28
300 South Las Vegas Boulevard, Suite 2-901
Las Vegas, Nevada 89101
Tel. 702-388-6012
Fax. 702-388-6248

On behalf of the Union:

DAVID ROSENFELD, ESQ.
WEINBERG, ROGER & ROSENFELD
1001 Marina Village Parkway, Suite 200
Alameda, California 94501-1091
Tel. 510-337-1001
Fax. 510-337-1023

On behalf of the Employer:
GREGORY E. SMITH, ESQ.
HEJMANOWSKI & MCCREA, LLC
520 South Fourth Street, Suite 320
Tel. 702-834-8868
Fax. 702-834-5262

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|--|---|
| <p style="text-align: right;">Page 5</p> <p>1 PROCEEDINGS</p> <p>2 HEARING OFFICER STROUP SCAFFIDI: National Labor Relations</p> <p>3 Board in the matter of Labor Plus comma LLC, case number 28-RC-</p> <p>4 150168 pursuant to the order of the Regional Director of Region</p> <p>5 28 dated May 20th, 2015. The Hearing Officer conducting this</p> <p>6 hearing is Stephanie Stroup Scaffidi.</p> <p>7 The official reporter makes the only official transcript</p> <p>8 of these proceedings and all citations and briefs and arguments</p> <p>9 must refer to the official record. In the event that any of</p> <p>10 the parties wishes to make off the record remarks requests to</p> <p>11 make such remarks should be directed to me and not to the</p> <p>12 official reporter.</p> <p>13 Statements of reasons in support of motions and objections</p> <p>14 should be specific and concise. Exceptions automatically</p> <p>15 follow all adverse rulings. Objections and exceptions may on</p> <p>16 appropriate request be permitted to an entire line of</p> <p>17 questioning.</p> <p>18 It appears from the Regional Director of Region 28's order</p> <p>19 dated May 20th that this hearing is held for the purpose of</p> <p>20 taking evidence concerning 16 challenge ballots and objections</p> <p>21 the election conducted on May 2, 2015. All parties have been</p> <p>22 advised that the hearing will continue from day to day as</p> <p>23 necessary until completed unless the regional director</p> <p>24 concludes that extraordinary circumstances warrant otherwise.</p> <p>25 The parties are advised that upon request they shall be</p> | <p style="text-align: right;">Page 7</p> <p>1 Will counsel and other representatives for the parties</p> <p>2 please state their appearances for the record? For the</p> <p>3 Employer.</p> <p>4 MR. G. SMITH: For the Employer I'm Gregory Smith of the</p> <p>5 law firm of Hejmanowski, that's H-E-J-M-A-N-O-W-S-K-I and</p> <p>6 McCrea, M-C, capital C, R-E-A, 520 South Fourth Street, Suite</p> <p>7 320, Las Vegas, Nevada 89107, 101.</p> <p>8 HEARING OFFICER STROUP SCAFFIDI: Okay. For the</p> <p>9 Petitioner.</p> <p>10 MR. ROSENFELD: David Rosenfeld, Weinberg, Roger and</p> <p>11 Rosenfeld, Alameda, California.</p> <p>12 HEARING OFFICER STROUP SCAFFIDI: And for the regional</p> <p>13 director.</p> <p>14 MR. L. SMITH: All right. Your Honor, for the regional</p> <p>15 director my name's Tony Smith for Region 28, 300 Las Vegas</p> <p>16 Boulevard South, Las Vegas, Nevada, Suite 2-901, zip code</p> <p>17 89101. And I would note that I am here as a representative of</p> <p>18 the regional director to see that the evidence adduced during</p> <p>19 the investigation is made available to the Hearing Officer. In</p> <p>20 this function I may ask some questions and if necessary call</p> <p>21 witnesses. I am not here to advocate on behalf of any party to</p> <p>22 this proceeding. My services are equally at the disposal of</p> <p>23 the Hearing Officer and all parties.</p> <p>24 HEARING OFFICER STROUP SCAFFIDI: Are there any</p> <p>25 appearances? Let the record show no response. As I stated,</p> |
| <p style="text-align: right;">Page 6</p> <p>1 entitled to a reasonable period at the close of the hearing for</p> <p>2 oral argument. Briefs are allowed only by special permission</p> <p>3 within the time and addressing the subjects permitted by me as</p> <p>4 Hearing Officer. In the event briefs are permitted a party</p> <p>5 which plans to order a transcript for purposes of preparing a</p> <p>6 brief should make arrangements with the reporting service</p> <p>7 contractor to obtain it on an expedited basis by pickup,</p> <p>8 delivery or overnight mail. No parties request for an</p> <p>9 extension of time to file briefs based upon a delay in receipt</p> <p>10 or the non-receipt of transcripts will normally be denied in</p> <p>11 the event such arrangements for expedited delivery were made --</p> <p>12 were not made by the party.</p> <p>13 In addition a party may offer into evidence a brief, memo</p> <p>14 of points and authorities, case citations or other legal</p> <p>15 arguments during the course of the hearing and before the</p> <p>16 hearing closes. In due course I will prepare and file with the</p> <p>17 regional director of Region 27 my report resolving questions of</p> <p>18 credibility and containing findings of fact and recommendations</p> <p>19 as to the disposition of the issues and will cause a copy</p> <p>20 thereof to be served on each of the parties. The parties have</p> <p>21 the right to file exceptions to my report with the regional</p> <p>22 director of Region 27 and may request a review of the regional</p> <p>23 director's decision from the Board. The procedure to be</p> <p>24 followed from that point forward is set forth in 102.69 of the</p> <p>25 Board's rules and regulations.</p> | <p style="text-align: right;">Page 8</p> <p>1 the issues for hearing are contained in the regional director</p> <p>2 of Region 28's order dated May 20th, 2015 concerning 16</p> <p>3 challenge ballots and 10 objections to the election conducted</p> <p>4 on May 2nd, 2015. I now propose to receive the formal papers.</p> <p>5 They have been marked for identification as Board Exhibit 1(a)</p> <p>6 through 1(e) with Exhibit 1(e) being an index and description</p> <p>7 of the entire exhibit. It has already been shown to all</p> <p>8 parties. Are there any objection to the receipt of Board</p> <p>9 Exhibit 1?</p> <p>10 MR. ROSENFELD: No.</p> <p>11 MR. G. SMITH: I don't really object to it but I guess I</p> <p>12 do object in a way that it's selective. It -- the -- there's a</p> <p>13 whole lot obviously in this case that it's left out of this</p> <p>14 document that is relevant to these proceedings and that's the</p> <p>15 only objection I have.</p> <p>16 HEARING OFFICER STROUP SCAFFIDI: Okay. I hear your</p> <p>17 objection, however the Board's rules and regulations specify</p> <p>18 what is part of Board Exhibit 1. And so to the extent it needs</p> <p>19 to be supplemented you can certainly do so through your own</p> <p>20 exhibits.</p> <p>21 MR. G. SMITH: Right.</p> <p>22 HEARING OFFICER STROUP SCAFFIDI: With that said I -- the</p> <p>23 formal papers are received into evidence.</p> <p>24 (Board Exhibit Number 1(a) through 1(e) Received into Evidence)</p> <p>25 MR. ROSENFELD: And, Madame Hearing Officer, there's also</p> |

1 Board Exhibit 2 which is --

2 HEARING OFFICER STROUP SCAFFIDI: Right. Can come in.
3 There's also Board Exhibit 2 which is the transfer order signed
4 by the General Counsel, Richard Griffin, transferring the case
5 from Region 28 to Region 27. It's been marked as Board Exhibit
6 2 and has been shown to all parties. Is there any objection to
7 Board Exhibit 2?

8 MR. ROSENFELD: No.

9 MR. G. SMITH: No.

10 HEARING OFFICER STROUP SCAFFIDI: Okay.

11 MR. L. SMITH: No.

12 HEARING OFFICER STROUP SCAFFIDI: Board Exhibit 2 is
13 received. Will the parties please state their positions and
14 I'll ask the Employer to go first.

15 (Board Exhibit Number 2 Received into Evidence)

16 MR. G. SMITH: Well our position is simple that we -- my
17 client had an agreement to supply labor to the Wynn Hotel in a
18 particular showroom. The Union -- the Employer lost that
19 contract on April 17 and no longer had the right to supply
20 employees to that showroom. And because of that essentially
21 there were never terminated from our -- from my client, from
22 Labor Plus. They're still eligible for referral to any other
23 hotel, casino or other venue in town or even other rooms in the
24 Wynn Hotel.

25 Those employees as my client understood it were card

1 Chevrolet's the longstanding Board precedent. This says it's
2 from date of the election. So from the date of the election
3 forward the Employer had an obligation to bargain and the
4 evidence will show that the employees of Labor Plus remained at
5 the show after the date of the election. So the proper way to
6 challenge this is not through an objections process or
7 challenge ballot process -- I'm sorry -- but it is if the
8 Employer thinks there's no bargaining unit they can refuse to
9 bargain and challenge it that way. So we're not here on the
10 correct process.

11 Now there's also another argument here. It turns out that
12 Labor Plus and Wynn were really joint employers. The fact is
13 that Labor Plus was nothing more than a payroll service. And
14 so our position is that the unit remained intact vis-à-vis the
15 Wynn which is actually a joint employer with Labor Plus. I'm
16 not addressing the objections since counsel didn't do that.

17 HEARING OFFICER STROUP SCAFFIDI: Are you saying they were
18 joint employers at the time of the election?

19 MR. ROSENFELD: Uh-huh. Yes.

20 HEARING OFFICER STROUP SCAFFIDI: And Wynn was not a party
21 to the election?

22 MR. ROSENFELD: No, but if you look at the cases, Madame
23 Hearing Officer, where this issue's been raised and if you look
24 at all the cases cited by Labor Plus in the briefing they did
25 these were all cases where the regional director either didn't

1 carrying members of the stagehand's union all throughout their
2 entire employment with Labor Plus. There was no objection to
3 that and there was no Union, anti-Union motivation in our
4 conduct, my client's conduct about those employees. They
5 simply lost the ability to supply employees to this venue where
6 the bargaining unit was limited to and it's as simple as that.

7 HEARING OFFICER STROUP SCAFFIDI: Okay. And Union, what
8 is your position?

9 MR. ROSENFELD: Our position is that that issue is
10 improperly before you because the regional director directed an
11 election -- excuse me -- the Employer signed a stipulation for
12 an election and waived that argument because they stipulated to
13 the election. And as a result we don't think it's properly
14 here for purposes of on any basis.

15 MR. G. SMITH: If you look at --

16 MR. ROSENFELD: Secondly, our position is that in any case
17 this isn't a situation where there was a clear and definite
18 decision as of the date of the election when they would be
19 terminated. The Employer waived that argument because they
20 didn't -- they stipulated to the election which is an exhibit
21 that will be in evidence. So they waived that by stipulating.
22 And our position is that under Board law once the election's
23 conducted the Employer -- if the Union wins then the Employer
24 has to bargain with the Union from the date of the election.
25 It's not the date of the certification. Mike O'Connor

1 direct an election or did direct an election and a request for
2 review was taken and the Board determined that it would not
3 direct an election. These are all pre-election cases every
4 single one of them.

5 HEARING OFFICER STROUP SCAFFIDI: Actually that is one of
6 my questions that I had for the Employer and that is whether
7 you can cite to any case authority in a situation where an
8 employer has stipulated to an election.

9 MR. ROSENFELD: Let me --

10 HEARING OFFICER STROUP SCAFFIDI: And then there --

11 MR. ROSENFELD: -- let me finish. I -- that's the problem
12 here that the Employer stipulated that all the cases --

13 HEARING OFFICER STROUP SCAFFIDI: I understand and that's
14 the question I'm trying to ask is whether --

15 MR. ROSENFELD: Okay.

16 HEARING OFFICER STROUP SCAFFIDI: -- you can cite to any
17 case authority dealing with a similar circumstance in which the
18 employer has stipulated to an election and the work was going
19 to end --

20 MR. G. SMITH: I think those --

21 HEARING OFFICER STROUP SCAFFIDI: -- on a date certain.

22 MR. G. SMITH: -- those cases are cited in the two
23 position statements.

24 MR. ROSENFELD: That's not correct.

25 HEARING OFFICER STROUP SCAFFIDI: Okay.

MR. ROSENFELD: I've read every one of them and there isn't a single one that involves the broader question of whether you can raise this issue after the election has been conducted and the answer is they did not cite a single case where the Board has dismissed a petition or in the Section 9(a) proceedings either dismissed an election or sustained challenged ballots on the ground that the employer no longer had the venue or didn't do the work. Every one of the Board cases was pre-election and the reason as I explained that once the election's conducted it converts from a Section 9 election proceeding to a Section 8 unfair labor practice proceeding because you judge the Union status on the date of the election. There are no cases. The company hasn't cited them and I know exactly what happened here.

The fact is that the day before the hearing Ms. LaRocca was in New York. She didn't get on a plane. She was stuck. She then caved in and agreed to the stipulation the night before the election and didn't come out here and litigate that issue in part because she might well have lost it but it makes no difference. She agreed to a stipulation for an election which was approved by the regional director and as far as we're concerned you shouldn't be taking this evidence. And I know that you're -- that the Regional Director directed a hearing. But your question is a valid one. There is no case authority for this proposition for the reason I've explained there can't

be.

HEARING OFFICER STROUP SCAFFIDI: Does the Union concede that the Union, unit description is limited to the employees of the Employer working at the ShowStoppers Theater?

MR. ROSENFELD: At that venue, yes.

HEARING OFFICER STROUP SCAFFIDI: Okay.

MR. ROSENFELD: But as Mr. Smith has pointed out these workers still remain employees of Labor Plus. They weren't terminated. None of them were terminated which of course goes to the challenged ballot issue. But they weren't terminated and they're eligible as he pointed out for employment elsewhere which goes to my other argument that the Wynn and Labor Plus really were in a joint employer relationship. And in terms of whether there can be effective bargaining that's not something you're authorized to rule on. Again Mike O'Connor Chevrolet says from the date, the moment the election's conducted we're the bargaining representative. And the employer acts at its peril in refusing to bargain. We've demanded bargaining. It's an Employer exhibit. Employer's refusing to bargain. We'll deal with that in an 8(a)(5) case as appropriate. And it may be that the appropriate remedy is the Transmarine remedy but this Employer -- it's not like the cases that the Employer cited where the employer went out of business at that location like construction. This Employer remains in business in many locations and these workers, the Union could've bargained where

to transfer them to or other locations. But that's not properly before you because that's the Section 8 unfair labor practices. All that's before you is the question of once the stipulation was signed and the election was conducted these issues are waived.

MR. G. SMITH: May I respond --

HEARING OFFICER STROUP SCAFFIDI: The --

MR. G. SMITH: -- to that, Your Honor?

HEARING OFFICER STROUP SCAFFIDI: -- Yeah.

MR. G. SMITH: If you take a look at Exhibit 9, Employer's Exhibit 9 --

HEARING OFFICER STROUP SCAFFIDI: Yes.

MR. G. SMITH: -- this was written on the day before the hearing was scheduled. "Additionally the parties agree that by moving toward an -- forward with an election without a pre-election hearing the Employer does not waive its right to raise issues concerning the final rule adopted by the National Labor Relations Board concerning representation case procedures. This includes the Employer's argument that the final rule adopted by the Board is not in accordance with the Act, exceeds the Board's statutory authority, interferes with protective speech during representation, election campaigns and deprives employees of their due process rights, violates employee privacy rights, entitles to ensure employees the fullest freedom in exercising their rights guaranteed by the

Act. It further includes the Employer's argument that the Board's adoption of the final rule was arbitrary, capricious and an abuse of discretion. The Union agreed not to raise a waiver argument at any post-election proceeding and the region articulated that the election details -- the parties agreed that the election will take place on Saturday, May 2."

MR. ROSENFELD: And if Mr. Smith would read it again to himself he would see that it referred only to the Employer's argument that the Board's rules were invalid not to any other argument. And I was involved in that conversation and that was expressly limited to that. There's no reference to waiving an argument or not waiving an argument that the election should not be conducted because of this closure issue or loss of venue issue. That waiver went only to the question of whether the Board's rules were properly adopted.

HEARING OFFICER STROUP SCAFFIDI: Okay.

MR. ROSENFELD: And you'll note that that's quite clear because the rest of the letter goes on to talk about the election details.

HEARING OFFICER STROUP SCAFFIDI: Well and just to respond to you, Mr. Rosenfeld, I mean I appreciate that much of this will have implications potentially under Section 8(a)(5). That being said it also is relevant I think in terms of whether any of the objections are sustained and whether we need to order a rerun election. So to that point I think some of this will be

1 relevant.

2 MR. ROSENFELD: Well there's a difference between the
3 challenged ballot issue and the objections.

4 HEARING OFFICER STROUP SCAFFIDI: Right. But it -- we're
5 here. I mean the hearing is for both. It's to you know get
6 evidence on both the challenged ballots and the objections.

7 MR. ROSENFELD: I understand that but I don't think
8 there's any relevant evidence on the challenged ballots because
9 the only basis of the challenged ballots was this issue of
10 losing the venue. And as I pointed out that's not really
11 properly here. I'm not arguing about the objections. If
12 counsel proves that there was some conduct that affected the
13 election then -- direct a new election. And I would concede
14 that if the region -- if a new election were directed they
15 might be able to raise this issue in that context again because
16 if you actually look there are several cases that counsel cited
17 in its motion to dismiss which hasn't been decided where that
18 happened where an election was -- there was one case for sure
19 that I remember where an election was conducted, the Union lost
20 it, filed objections, the objections were sustained and then
21 before the second election could be conducted the employer said
22 we're out of here. It's actually the Shoe case now I remember.
23 And the employer said that they basically closed down the
24 operation. And the Board didn't -- did not direct the second
25 election. So that might be an argument that counsel could make

1 reasonable expectancy of continued employment is the
2 appropriate test.

3 MR. G. SMITH: Again I think those cases that are cited.
4 As you might know I got into this case late so I'm not up on
5 the case law as much as I'd like to be.

6 HEARING OFFICER STROUP SCAFFIDI: Okay.

7 MR. G. SMITH: But my -- in my reading of those position
8 statements I think that's exactly what they addressed.

9 HEARING OFFICER STROUP SCAFFIDI: Okay.

10 MR. G. SMITH: The -- and to point out too there was --
11 there is and I'll -- forgive me -- if I can't point to the
12 docket right now. But there is an indication that the notice
13 of the employees being gone from the employment of labor law
14 was announced before the election and several of these
15 employees resigned. Well I don't know if they didn't actually
16 formally resign but they stopped working for Labor Plus and
17 began working at the Wynn Hotel the day before the election.
18 It was I think there were five or six employees who did that.

19 MR. ROSENFELD: And counsel's point is in response to
20 yours that it's not -- there's no reasonable expectancy test
21 here unless you're off work for some other reason before the
22 date of the election. For example, there are cases where
23 someone's laid off, no reasonable expectancy of returning or
24 somebody's on leave, no reasonable expectation they'll return
25 and they may not be eligible. That test doesn't apply when

1 way down the road if it turned out we were going to have a
2 second election and we don't think that's going to happen. But
3 that would be the appropriate response and goes back to my
4 point, Madame Hearing Officer, that in the Section 9 proceeding
5 we treat this differently than we would the Section 8(a)(5).
6 As of the date of the election it was a viable unit. The
7 election was conducted. The Employer stipulated to it. I'm
8 not going to keep repeating these arguments but that's where
9 we're at.

10 MR. G. SMITH: Well that's what you do. Excuse me.

11 MR. ROSENFELD: That's all I do is --

12 MR. G. SMITH: If I --

13 MR. ROSENFELD: -- repeat arguments.

14 MR. G. SMITH: -- if I --

15 MR. ROSENFELD: When I find a good one --

16 HEARING OFFICER STROUP SCAFFIDI: I have --

17 MR. G. SMITH: -- if I may --

18 MR. ROSENFELD: -- I repeat it.

19 HEARING OFFICER STROUP SCAFFIDI: -- I have one more
20 question though before we go any further and that is that in
21 your objections you state that the appropriate test is whether
22 it had any reasonable expectation of continued employment and
23 not whether they were employed as of the payroll eligibility
24 date and on the date of the election. And so I wanted to know
25 whether you can cite to any authority that would hold that the

1 they're employed as of the date of the election. It makes no
2 difference what happens afterwards.

3 MR. G. SMITH: That doesn't have any --

4 MR. ROSENFELD: Well let me --

5 MR. G. SMITH: -- case that says that.

6 MR. ROSENFELD: -- finish. And besides that as to the
7 five employees that Mr. Smith is referencing as he conceded in
8 his opening statement they were employees of Labor Plus. The
9 fact that they may have started working for somebody else a
10 day, that day if they did doesn't affect the fact that they
11 still remained employees of Labor Plus.

12 HEARING OFFICER STROUP SCAFFIDI: Okay.

13 MR. G. SMITH: But they wouldn't be in the bargaining
14 unit. The bargaining unit was that the -- work in that room.

15 MR. ROSENFELD: Well if they're joint employers they'd be
16 in the bargaining unit.

17 HEARING OFFICER STROUP SCAFFIDI: All right. Well let's
18 continue. The party filing an objection has the burden of
19 proof to establish that the objectionable conduct affected the
20 results of the election. Generally the party seeking to
21 exclude or disenfranchise an employee or employee
22 classification has the burden of proof to sustain the
23 challenge. If the issue involves statutory exclusions the
24 party seeking to exclude employees bears the burden of proof.
25 You must present specific detailed evidence in support of your

1 position. General conclusory, inclusionary statements by
2 witnesses will not be sufficient. In light of the fact that
3 the challenges and objections are the Employer's I recommend
4 that the Employer present its evidence first on the 16
5 challenged ballots and the objections. The Union can then
6 present its evidence regarding the challenges and objections.

7 Are there any motions or subpoena issues?

8 MR. ROSENFELD: None that I'm aware of.

9 HEARING OFFICER STROUP SCAFFIDI: Okay.

10 MR. G. SMITH: No, no subpoena issue.

11 MR. ROSENFELD: Okay. Madame Hearing Officer, before the
12 record opened we went and marked some Employer Exhibits and I'd
13 like to just run through those so we can get that done.
14 Employer Exhibit 1 are four photographs and I'm not agreeing
15 that those can be offered. They are attached to a later
16 exhibit that I'll refer to.

17 Employer Exhibit 2 is the initial letter from the region
18 dated April 15th enclosing the petition and the other relevant
19 documents required by the Board's rules when a petition is
20 filed. And that document, Employer's Exhibit 2, I have no
21 objection they go into evidence.

22 Employer Exhibit 3 is the questionnaire on commerce
23 information filed by the Employer and I have no objection that
24 that goes into evidence.

25 Employer Exhibit 4 is a letter dated April 22 from Ms.

1 office. That letter may go in with an adequate foundation.
2 The letter was sent and received but once again that's hearsay
3 and not going for the truth of the matter.

4 Employer Exhibit 10 is the letter to the parties meaning
5 Mr. Gorey on behalf of the Union and Ms. Taratko on behalf of
6 the Employer of which copies were sent to Ms. LaRocca and Ms.
7 Sencer. It is the letter enclosing the notice of election and
8 attached to it is the stipulated election agreement which was
9 signed by Ms. LaRocca and Ms. Sencer both as indicated in the
10 document and approved by the regional director on the 24th.
11 And as part of that there's the notice of election and the
12 notice of election document, designation of observers and
13 several other documents and that may go into evidence.

14 Employer Exhibit 11 is the voter list as it's now called
15 for this unit. That may go into evidence and I don't have any
16 objection to that based on hearsay.

17 Employer Exhibit 12 is a letter dated April 27 to Cornele
18 Overstreet from Ms. LaRocca. It's one page long, copy was sent
19 to Michael Johnson and Caren Sencer and that may go into
20 evidence on the ground that it was sent and received. But
21 again it's hearsay.

22 Employer Exhibit 13 is a letter dated April 28 to Cornele
23 Overstreet from Ms. LaRocca with copy to Mr. Johnson and Ms.
24 Sencer. And that may go into evidence on the ground that it
25 was sent and received as hearsay.

1 LaRocca, counsel to the company, for the company to Michael
2 Johnson. I have no objection to that goes into evidence based
3 on the fact that there's an adequate foundation meaning it was
4 a letter sent by Ms. LaRocca to the region. There was no copy
5 sent to our office but I do not agree that it goes in for the
6 truth of the matter because it's a hearsay statement.

7 The Employer Exhibit 5 is another letter from Ms. LaRocca.
8 It's one page to Mr. Overstreet dated April 21 and I agree that
9 there was an adequate foundation that the letter was sent and
10 received as indicated that it be deemed as hearsay and it may
11 not go in for the truth of the matter.

12 And Employer Exhibit 6 is an email from Michael Johnson to
13 Ms. LaRocca and Kristina Zinnen who's in my office regarding
14 another case and this case. And that may go in and I have no
15 objection if it goes in for the truth of the matter.

16 Employer Exhibit 7 is the statement of position filed by
17 the Employer to which was attached a list of the employees and
18 that letter may go in. I mean that position statement may go
19 into evidence and I -- may go in for the truth of the matter.
20 I have no objection to that.

21 Employer Exhibit 8 is the order denying a request to
22 postpone hearing issued by the regional director. That may go
23 into evidence.

24 Employer Exhibit 9 is an April 22 letter to Michael
25 Johnson from Ms. LaRocca with copy to Caren Sencer in my

1 Exhibit -- let me see. Employer Exhibit 14 is a letter
2 dated April 28th to Ms. Taratko and Mr. Gorey which is a
3 revised notice of election this case and that may go into
4 evidence.

5 Employer Exhibit 15 is the tally of ballots and that may
6 go into evidence.

7 Employer Exhibit 16 is a motion to dismiss which was
8 lodged with the region by the Employer. And I will offer a
9 stipulation as part of that has not been ruled upon by the
10 regional director. That may go into evidence as a pleading.
11 Again, it's hearsay and I don't -- it may not go in for the
12 truth of the matter.

13 Employer Exhibit 17 is a letter that Mr. Gorey sent to Mr.
14 Long demanding bargaining. That may go into evidence as an
15 exhibit. I have no objection on hearsay since my client sent
16 it.

17 Employer Exhibit 18 is a letter the region sent to both
18 parties identifying the challenged ballots. That may go into
19 evidence.

20 Employer 19 are pictures of the front of this building
21 where the election was conducted and subject to a little bit
22 more identification I have no objection to them going in. I do
23 object however to the writing on what is the first page
24 indicating where the booth and the observer table is. But I
25 will agree that's an accurate representation of where the

| | |
|---|---|
| <p style="text-align: right;">Page 25</p> <p>1 election was conducted. That's Employer Exhibit 19. 2 Employer Exhibit 20 are the objections to the election. 3 That may go in. That's a pleading. It may be part of the 4 Board's exhibits. 5 Employer 21 is a letter that Ms. LaRocca sent to the 6 region. It's a position statement. Again, I don't object on 7 grounds it was sent and received. It is hearsay and may not go 8 in for the truth of the matter. It was not -- no copy of that 9 was sent to my office. And attached to that are the pictures 10 which are Employer Exhibit 1 and again I object to those going 11 into evidence, not pictures but copies of some payroll records. 12 Employer Exhibit 22 is a letter Ms. LaRocca sent to Ms. 13 Sencer in my office refusing to bargain. That may go into 14 evidence and that's -- I'm not disputing the truth of what was 15 said in that letter that they're refusing to bargain. 16 Employer 23 is an email from my partner, Caren Sencer, to 17 Ms. LaRocca regarding the bargaining issue and that may go into 18 evidence. 19 Employer Exhibit 24 is our response to the motion to 20 dismiss and that may go into evidence and I think that speeds 21 things up. And I only just want to offer that one stipulation 22 that explains -- figure out what I -- oh, I went through it so 23 fast I forgot what the stipulation was. I'll remember but 24 anyway I -- based on that I would accept the Employer's offer 25 of all these exhibits subject to the caveats that I've stated.</p> | <p style="text-align: right;">Page 27</p> <p>1 MR. HOLMSTROM: My last name is spelled H-O-L-M-S-T-R-O-M. 2 HEARING OFFICER STROUP SCAFFIDI: One minute. I have to 3 swear him in. 4 MR. L. SMITH: Even before he spells his name. 5 Whereupon, 6 COREY HOLMSTROM 7 having been duly sworn, was called as a witness herein and was 8 examined and testified as follows: 9 HEARING OFFICER STROUP SCAFFIDI: Can you please state and 10 spell your name for the record. 11 THE WITNESS: My name is Corey Holmstrom. It is spelled 12 C-O-R-E-Y, last name is H-O-L-M-S-T-R-O-M. 13 DIRECT EXAMINATION 14 Q BY MR. G. SMITH: Corey, are you employed? 15 A Yes. 16 Q Where do you work? 17 A I work for FHI Plant Services at a Molycorp mine. 18 Q Okay. How did you become involved in this election 19 procedure? 20 A Rita Taratko gave me a phone call before the election 21 asking if I could be the observer during the election for her 22 because of our past relationship. She was a scout leader for 23 me as I was doing Boy Scouts. 24 Q Okay. Did you make Eagle? 25 A Yes.</p> |
| <p style="text-align: right;">Page 26</p> <p>1 HEARING OFFICER STROUP SCAFFIDI: I just want to clarify. 2 So the motion to dismiss has not been ruled on. 3 MR. ROSENFELD: No, at least not that I'm aware of. 4 HEARING OFFICER STROUP SCAFFIDI: I thought in the 5 conference call that we had yesterday I thought one of you had 6 said that the motion to dismiss had been denied. 7 MR. ROSENFELD: Well we have the regional director's 8 representative here. He might know. 9 MR. L. SMITH: I can check the case file. I don't recall 10 one being issued but I can check that. 11 HEARING OFFICER STROUP SCAFFIDI: Okay. 12 MR. L. SMITH: And I can go get the computer right now 13 and -- 14 MR. ROSENFELD: Well why don't we go on and we can get, 15 figure that out later. 16 HEARING OFFICER STROUP SCAFFIDI: Yeah, let's get started. 17 The Employer, will you please present your first witness. 18 MR. G. SMITH: Yes, may I have just a moment? 19 HEARING OFFICER STROUP SCAFFIDI: Yes. We'll go off the 20 record while he's -- if you want to get it now. 21 (Off the record at 10:58 a.m.) 22 HEARING OFFICER STROUP SCAFFIDI: All right. We're back 23 on the record. Who have you called? 24 MR. G. SMITH: Corey Holmstrom. Can you spell your last 25 name, Corey?</p> | <p style="text-align: right;">Page 28</p> <p>1 Q Okay. 2 MR. ROSENFELD: Did you make vulture? 3 Q BY MR. G. SMITH: When you arrived at the polling place -- 4 MR. ROSENFELD: I'm going to object. 5 HEARING OFFICER STROUP SCAFFIDI: On what basis? 6 MR. ROSENFELD: He wasn't a proper observer. 7 HEARING OFFICER STROUP SCAFFIDI: This is -- 8 MR. ROSENFELD: He wasn't an employee of the Employer. 9 You can't just reach out and find an Eagle Scout or a vulture 10 scout and have them be an observer. 11 HEARING OFFICER STROUP SCAFFIDI: Well, the objection is 12 overruled because the time to have made that objection was at 13 the election. The fact is he was an observer, and so his 14 testimony is going to be relevant as to what happened at the 15 polling site. 16 MR. ROSENFELD: Well, but there was no -- we did not know 17 that he wasn't employed. Now it turns out he was not an 18 employee, wasn't a proper observer, shouldn't be allowed to 19 testify. 20 HEARING OFFICER STROUP SCAFFIDI: Again, the objection is 21 overruled on the basis that the time to have made that 22 objection was at the polling site. The time to have vetted him 23 was at the polling site. 24 Q BY MR. G. SMITH: Okay, when did -- you arrived at the 25 polling place when?</p> |

1 A I arrived at 9:00.
 2 Q That's on the May 2nd?
 3 A Yes.
 4 Q Okay. And when you got there, what was it like?
 5 A The Race For the Cure was going on at the time, so there
 6 was runners and walkers going down Las Vegas Boulevard. As far
 7 as at the building itself, there was just a security guard
 8 standing on the steps making sure there was no one loitering.
 9 There was a couple individuals sitting off to the right of the
 10 steps in the grass in the shade. And then as far as I could
 11 see, I was the first one to arrive.
 12 Q Okay. And you're talking about, this is the building that
 13 we're in right now; is that correct?
 14 A Yes.
 15 Q And you're talking about the 4th Street entrance?
 16 A Yes.
 17 Q Okay. When Michael Jackson -- do you know Michael
 18 Jackson?
 19 A Yes. He was the man in charge of the election, giving the
 20 election for all the employees.
 21 Q He was with the NLRB?
 22 A Yeah, sorry. The NLRB, yeah.
 23 HEARING OFFICER STROUP SCAFFIDI: Michael Johnson or
 24 Jackson?
 25 MR. G. SMITH: I may have said Jackson, but I meant

1 Johnson.
 2 HEARING OFFICER STROUP SCAFFIDI: Okay.
 3 Q BY MR. G. SMITH: Is that who you're talking about?
 4 Johnson?
 5 A Yes, sorry.
 6 Q Okay. Sorry. Did he leave the area before the election
 7 was actually started?
 8 A Yes. He -- when he arrived, he went inside this building
 9 several times to grab a table and five or six chairs to set up
 10 for the election.
 11 Q Okay. And do you know where he set the booth?
 12 A He set it, the booth was right out -- right behind the
 13 pillar out on the -- at the top of the steps that was at the
 14 east entrance. He set it right behind the pillar, and then the
 15 table was set right in front of the main door.
 16 Q And then did he move the table later?
 17 A No. That was where we had the table set up.
 18 Q Okay. So it stayed in the same place the whole time?
 19 A Yeah.
 20 Q Okay.
 21 HEARING OFFICER STROUP SCAFFIDI: It might be helpful for
 22 you to be able to refer to the pictures as you're --
 23 MR. G. SMITH: That's what I'm trying to do --
 24 HEARING OFFICER STROUP SCAFFIDI: -- this line of
 25 questioning.

1 MR. G. SMITH: -- if I can find them.
 2 HEARING OFFICER STROUP SCAFFIDI: I believe they're 19.
 3 MR. G. SMITH: Thank you.
 4 MR. ROSENFELD: Should I give my copy to the witness or do
 5 you have one?
 6 MR. G. SMITH: I got one.
 7 HEARING OFFICER STROUP SCAFFIDI: Do we have an extra?
 8 MR. G. SMITH: Oh, thank you.
 9 MR. L. SMITH: If you want to use mine.
 10 HEARING OFFICER STROUP SCAFFIDI: Can he borrow that?
 11 Q BY MR. G. SMITH: On the top page of the pictures that you
 12 have in your hand now -- by the way, there's seven pictures
 13 here I think, if I'm not mistaken. But we're talking about
 14 19A. And you -- somebody has written observer table. Is that
 15 pursuant to your instruction?
 16 A No. I did not -- that is not where I remember the
 17 observer table being as we were more in front on the door
 18 pretty much blocking that entrance.
 19 Q In front of the revolving door?
 20 A Yes.
 21 Q Isn't that the revolving door right behind it?
 22 A Yes.
 23 Q So where was the table then?
 24 A As -- we were slightly forward and a little bit farther
 25 back into the alcove than where they've got this rectangle

1 colored in.
 2 Q I see. By that you mean, on the picture to the left and
 3 up?
 4 A And up, yes.
 5 Q Okay. More right in front of the door -- the entrance to
 6 the --
 7 A Yes.
 8 Q The partition or doors, okay. And then the booth was
 9 behind the pillar from the table?
 10 A Yes.
 11 Q You couldn't see the booth while you were at --
 12 A You could see it from the table, but it was behind the
 13 pillar, I assume to make it more difficult to see from the
 14 street. But it was actually behind the pillar.
 15 HEARING OFFICER STROUP SCAFFIDI: Excuse me, just because
 16 I need to have a visual of this. So can you describe how the
 17 booth was situated, which way it was facing when someone
 18 entered?
 19 THE WITNESS: When you entered, your back was to the
 20 pillar. So you were, as you entered the booth, you were facing
 21 the building, and then the flap would come down behind you and
 22 your back was to the street.
 23 HEARING OFFICER STROUP SCAFFIDI: This was a metal booth
 24 with a curtain?
 25 THE WITNESS: Yes.

1 Q BY MR. G. SMITH: So if the -- the booth has one entrance,
 2 right?
 3 A Yes.
 4 Q And the entrance was facing toward the street, which was
 5 away from this picture?
 6 A Yes.
 7 Q Toward you from the picture?
 8 A Uh-huh.
 9 Q Okay. Gotcha. And what happened before the election
 10 actually started?
 11 A Before the election started, Rita Taratko and another
 12 gentleman arrived as well as a representative of the Union.
 13 They talked with Michael Johnson about the elections and when
 14 they needed to come back after the elections. Michael Johnson
 15 also handed me a sheet of paper with my relevant duties as an
 16 observer, and the Employer observer badge. Shortly before
 17 10:00, a few employees arrived, and Ms. Rita Taratko mentioned
 18 that employees were arriving, that they needed to leave.
 19 Mr. Johnson agreed. Both the Union rep and Rita Taratko left.
 20 Michael Johnson finished setting up a few more things, and then
 21 called over the first gentleman to get the voting started.
 22 Q Who was the Union observer at that time?
 23 A At that time there was no Union observer.
 24 Q Okay. What happened next?
 25 A Mr. Johnson called forth the first gentleman. I mentioned

1 text message and showed it to Eric Fouts. Eric Fouts said that
 2 he, like, he said that he was going to be the Union observer,
 3 to which Mr. Johnson said, okay. And then the rest of the men
 4 voted. After that group was done voting, they talked for a
 5 little bit and then left except for Mr. Fouts, who was now the
 6 observer, and one other gentleman.
 7 HEARING OFFICER STROUP SCAFFIDI: How do you spell his
 8 name for the record, please?
 9 MR. G. SMITH: I think it's F-A-U-T-S.
 10 MR. L. SMITH: It's F-O-U-T-S.
 11 MR. G. SMITH: I'm sorry. F-O-U-T-S. Okay.
 12 MR. ROSENFELD: It's listed on Employer Exhibit 11.
 13 MR. G. SMITH: I'm sorry?
 14 MR. ROSENFELD: Sorry. The name was listed on Employer
 15 Exhibit 11, the voter list.
 16 MR. G. SMITH: Okay.
 17 Q BY MR. G. SMITH: After the regular voters had voted, did
 18 Mr. Fouts stay as the observer?
 19 A Yes.
 20 Q Okay. And one of the -- you said one of the employees
 21 stayed in the area.
 22 A Yes.
 23 Q And what did he do for the next two hours?
 24 A If there were no voters present, he would chitchat with
 25 Mr. Fouts or me or Johnson or as a group. Then as voters did

1 that I did not know any of these employees, and if we could
 2 check their I.D.s to make sure they were who they said they
 3 were. Mr. Johnson checked the first gentleman's I.D., I then
 4 checked his name off the list. Mr. Johnson prepared to have
 5 that gentleman vote. I then voiced my first challenge to the
 6 employee. Mr. Johnson asked if I was going to give this
 7 challenge to the rest of the employees, at which point I
 8 announced, yes, I was. So Mr. Johnson called over -- the rest
 9 of the employees had arrived, and at this point several more
 10 had, so there were about five or six employees. He had them
 11 all come to the table and take a seat. He passed around a
 12 challenge form and a small manila envelope to each of them,
 13 explained that they were all being challenged, explained what
 14 the challenge was, and had them fill out their name, their
 15 position, have them mark that the Employer was challenged them,
 16 and then write what the challenge was on both the form and the
 17 envelope. After answering questions they had, he then took the
 18 first gentleman to go vote while the rest of the gentlemen were
 19 still sitting at the table.
 20 Q Okay. Then what?
 21 A The first gentleman went to vote, and then the follow --
 22 after that gentleman voted, Mr. Johnson sealed his vote in a
 23 manila envelope and had him sign it to show that it was sealed.
 24 As -- and then he followed suit with the next few gentlemen.
 25 During this voting time, one of the gentleman had received a

1 arrive, he gave them a greeting, and then as they were seated
 2 at the table filling out the challenge forms he would back away
 3 from the table while we were having the next employees vote.
 4 Q Okay. But he never left the area?
 5 A No.
 6 Q Do you know his name?
 7 A I was -- I did not remember his name at the time, but I
 8 have been told his name is Eric Meyers.
 9 Q And at the end of the voting time --
 10 MR. ROSENFELD: Move to strike. That's hearsay.
 11 HEARING OFFICER STROUP SCAFFIDI: Can the parties
 12 stipulate so the employee that we're talking about that was at
 13 the polling site?
 14 MR. ROSENFELD: No. No. Burden is on the Employer.
 15 HEARING OFFICER STROUP SCAFFIDI: Okay.
 16 Q BY MR. G. SMITH: What happened after the --
 17 HEARING OFFICER STROUP SCAFFIDI: I'm not going to -- hold
 18 on. I'm not going to strike the testimony, but I'll just
 19 afford it whatever we just deemed appropriate at the time.
 20 MR. G. SMITH: Thank you.
 21 Q BY MR. G. SMITH: What happened when the polls were
 22 closed?
 23 A The polls were closed. Ms. Taratko and the Union reps
 24 arrived. Mr. Johnson explained to them that the voting -- the
 25 votes could not be counted because they had been challenged.

1 He explained to the Union what the challenge was. He then
 2 asked Ms. Taratko if she could -- if these challenges could be
 3 settled here and now. She said they could not. He then placed
 4 all of the challenge votes inside of a large metal envelope and
 5 sealed it and had both the Union rep and Ms. Taratko sign on
 6 it. He then said that these votes would go to his boss above
 7 his head. If they had any questions to contact him, but it was
 8 now out of his hands.
 9 Q Was the Race For the Cure still going on?
 10 A No. At that time the Race For the Cure had ended and
 11 regular traffic had resumed.
 12 Q Did that include pedestrian traffic as well?
 13 A Yes.
 14 MR. G. SMITH: Nothing further.
 15 HEARING OFFICER STROUP SCAFFIDI: Okay. Mr. Rosenfeld?
 16 MR. ROSENFELD: Is there a statement from this witness?
 17 MR. L. SMITH: There is not.
 18 MR. G. SMITH: I have none either.
 19 CROSS-EXAMINATION
 20 Q BY MR. ROSENFELD: Mr. Holmstrom, as I understand it,
 21 there was -- the Race For the Cure was going on on Las Vegas
 22 Boulevard?
 23 A Yes.
 24 Q Okay. And as I understand it, the booth was behind the
 25 pillar, correct?

1 Q And whenever someone voted he would move away from the
 2 voting area, correct?
 3 A Yes.
 4 Q Okay. But he would chitchat with you or Mr. Johnson or
 5 the observer, correct?
 6 A Yes.
 7 Q You challenged all the voters on the grounds that they
 8 weren't eligible, correct?
 9 A Yes.
 10 Q And you were instructed by someone to do that?
 11 A Yes.
 12 Q You didn't know any of these people who voted, did you?
 13 A I did not.
 14 Q You didn't know anything about them?
 15 A No.
 16 Q You've never worked for this company?
 17 A I have not.
 18 Q And did somebody explain to you your duties as an observer
 19 before you showed up?
 20 A Not specifically. Before I showed up I was just told as
 21 an observer, I was just to watch and make sure that nothing I
 22 observed seemed unusual or in any way, you know, somebody
 23 giving signals or anything, trying to influence the voting.
 24 Q And you observed the entire voting, didn't you?
 25 A Yes.

1 A Yes.
 2 Q So a voter would go behind the pillar to vote?
 3 A Uh-huh.
 4 Q Correct?
 5 A Yes.
 6 Q And that voter would have his back to the pillar and his
 7 face toward the building.
 8 A Yes.
 9 Q You go and stand in front of the booth and pull the
 10 curtain that the booth has over his head --
 11 A Yes.
 12 Q -- or her head, correct? So there would be secrecy what
 13 they were doing, correct?
 14 A Yes.
 15 Q Nobody could see what they were doing, correct?
 16 A Yes.
 17 Q Okay. And as I understand it, there was somebody -- there
 18 was a Union observer there for the entire time you were there
 19 except for a brief few moments before it started?
 20 A Yes. A few minutes in, as we were doing the challenge
 21 paperwork for the first few men, the Union observer was
 22 informed. At that time only one gentleman had voted.
 23 Q All right. And as I understand it, there was somebody
 24 else who hung around the area during the period of the voting?
 25 A Yes.

1 Q Nobody was giving signals, correct?
 2 A Not that I saw, no.
 3 Q Nothing unusual, correct?
 4 A No.
 5 Q It was a fair election, correct?
 6 A It appears so, yes.
 7 Q Nothing irregular, right?
 8 A No.
 9 Q You didn't report to management that you were upset about
 10 anything, did you?
 11 A No.
 12 Q You were satisfied it was a totally secret ballot
 13 election, correct?
 14 A Yes.
 15 MR. ROSENFELD: Thank you. Nothing further.
 16 HEARING OFFICER STROUP SCAFFIDI: I have some questions.
 17 You have any follow up?
 18 MR. G. SMITH: No, I don't.
 19 MR. L. SMITH: I do have some questions after you're --
 20 MR. ROSENFELD: I object --
 21 HEARING OFFICER STROUP SCAFFIDI: No, go ahead.
 22 MR. ROSENFELD: -- directed representative.
 23 HEARING OFFICER STROUP SCAFFIDI: On what grounds?
 24 MR. ROSENFELD: It's irrelevant. He's now said it was
 25 totally a secret ballot, no problems, nothing further to ask.

1 HEARING OFFICER STROUP SCAFFIDI: Well, I myself have
2 additional questions about the mechanics of the votes. So to
3 that -- and I would welcome additional questions.

4 CROSS-EXAMINATION

5 Q BY MR. L. SMITH: Mr. Holmstrom, my name is Tony Smith,
6 I'm an attorney with the National Labor Relations Board. I'll
7 be asking you a few questions. You said that Ms. Taratko --
8 you became involved because of Ms. Taratko, correct?

9 A Yes.

10 Q And were you paid to be the Employer's observer?

11 A No.

12 Q So you received nothing in compensation at all?

13 A No.

14 Q Now, when you say no, are you saying --

15 A I'm sorry. I received no compensation.

16 Q Okay. Now, you said there were runners and walkers for
17 this Race For the Cure. This is down on Las Vegas Boulevard;
18 is that correct?

19 A That is correct.

20 Q And Las Vegas Boulevard is about 30 or 40 feet away from
21 where you were as an observer; is that right?

22 A Yes.

23 Q Now, how many people are we talking that were out on Las
24 Vegas Boulevard? Are we talking hundreds? Thousands?

25 A There were hundreds, possibly thousands of runners going

1 down this road at that time.

2 Q Okay. Well, when you say hundreds, possibly thousands --

3 A There -- at any one time you could see over 500 people on
4 the road when the voting started.

5 Q Okay. So when these people are going by, they're -- were
6 there also people on the sidewalks observing?

7 A There were. Not in front of the particular building we
8 were at, but you could see the people observing farther down
9 the street in either direction.

10 Q Okay. So those were in addition to the people that were
11 walking, correct?

12 A Yes.

13 Q So with all these people walking, there was also quite a
14 bit of noise with all these walkers, wasn't there?

15 MR. ROSENFELD: I object. The representative of the
16 director is this close to the side -- Mr. Smith's taking sides
17 here. It's the Employer's burden to put on the evidence, not
18 for the Regional Director's representative to prove there's
19 noise. They didn't even offer that. And the Regional
20 Director's report doesn't say that that's an objection.

21 HEARING OFFICER STROUP SCAFFIDI: I'm going to allow it.
22 I want to -- I need to understand what the day looked like,
23 and --

24 MR. ROSENFELD: Well, if Mr. Smith can't put on a case
25 then why should you do it?

1 HEARING OFFICER STROUP SCAFFIDI: I need to have
2 sufficient evidence to be able to write a recommendation. And
3 so this isn't a --

4 MR. ROSENFELD: But you've got -- you heard his testimony.
5 He said nothing unusual happened. They voted behind the booth.

6 MR. G. SMITH: That argument makes no sense because he
7 doesn't know what's unusual or not. He's never been to these
8 elections before. He described the facts as he understood
9 them, he thought it was fair. But that's not necessarily the
10 correct conclusion.

11 HEARING OFFICER STROUP SCAFFIDI: The time to have
12 objected to that line of questioning, though, was when he was
13 asking those questions. I mean, the fact is that that
14 testimony is in. Your objection to the Regional Director's
15 questions are overruled. I'm going to allow them. I think it
16 helps to illustrate what the day looked like.

17 MR. G. SMITH: And I move to strike the questions that he
18 asked about the fairness, then.

19 MR. ROSENFELD: I move to strike Mr. Smith's questions.

20 HEARING OFFICER STROUP SCAFFIDI: Your motion to strike
21 his line of questioning is overruled. I will afford it
22 whatever weight I think is appropriate when I write my
23 recommendation. And same for you, Mr. Rosenfeld, as to your
24 motion to strike testimony.

25 Please proceed, Mr. Smith.

1 MR. L. SMITH: Thank you, Madam Hearing Officer.

2 Q BY MR. L. SMITH: So I had asked the amounts of noise or
3 if there was quite a bit of noise from these walkers for the
4 Race For the Cure.

5 A There was a decent amount of noise. About one block down
6 is where the start was, and they had some very large speakers
7 and music playing. Also, several of the walkers coming down
8 had their own speakers and were playing their own music as well
9 as all of the talking and everything else that they were doing
10 as they were doing this walk slash run.

11 Q Okay. Now, you had testified earlier about some
12 individual, I believe you said it was Eric Meyers, talking to
13 people. How far away was Meyers when he was talking to any of
14 these voters that were coming up?

15 A Usually, five or six feet as he would, you know, greet
16 them as they were coming up the steps. Because they knew -- I
17 assume he knew all of the other employees who had just -- you
18 know, greet them, offer some chitchat to them. And then as
19 they came --

20 Q And --

21 A Sorry.

22 Q -- I'm going to actually interrupt you because maybe I
23 didn't phrase the question clearly enough. How far away from
24 you was Eric Meyers?

25 A I'd say somewhere between six and ten feet away from me.

1 Q Okay. Now, with the position of Mr. Meyers, the distance
2 away from you and the background noise, is it fair to say that
3 you couldn't really make out all of the conversation that he
4 was having with anybody?
5 A That is true.
6 Q Is it fair to say that he wasn't yelling in his
7 conversations or speaking loud enough or loudly so that
8 everyone around could hear?
9 A Yes.
10 Q Like the runners?
11 A No, he was not speaking loudly enough so that everyone
12 could hear the entire conversation.
13 Q So as to what he said to any particular voter, you didn't
14 hear everything that he said to any particular voter; is that
15 correct?
16 A Correct.
17 Q Now, for any of these voters that Mr. Meyers talked to,
18 none of them turned around and then didn't vote; is that right?
19 A That is correct.
20 Q So, in your observation from any conversation that
21 Mr. Meyers might have had with anybody, nobody turned around
22 and failed to vote then after that conversation; is that right?
23 A That is correct.
24 Q Now, earlier when you were asked what happened about the
25 pre-election, you said that the people that were there was Rita

1 asked him?
2 A He did.
3 Q And at any point did he tell you not to ask questions?
4 A No.
5 Q Now, you mentioned that there was an individual that got a
6 text message and showed it to Eric Fouts. At the time you
7 didn't identify who that person was. Was that Eric Meyers that
8 had received the text message?
9 A It was not. It was another one of the employees, but I do
10 not remember his name.
11 Q You said at some point the Race For the Cure ended. Do
12 you recall when that was?
13 A I do not. I just -- as the voting was going on, I
14 happened to notice that there were no more runners coming
15 through, and somebody had -- workers had come through and
16 started picking up the cones and allowing traffic.
17 Q Okay. So the runners were eventually, it sounds like,
18 were replaced by workers. But there were -- was there any
19 point when there were still not people or traffic or runners
20 present while the voting was going on?
21 A There was a brief time after the last runner had come
22 through before the street was opened to vehicle and pedestrian
23 traffic.
24 Q Okay. And were there other people that were there still
25 observing? I'm sorry, not -- observing the Race For the Cure,

1 Taratko, another individual, and Michael Johnson. The other
2 individual that was there, was that -- what was the name of
3 that person, if you know?
4 A Rita Taratko had another gentleman with her. I don't
5 remember his name. And then the -- or the Union also had a
6 representative there and I did not catch her name.
7 Q So the individuals that were there, neither one of them
8 was Eric Fouts or Eric Meyers; is that right?
9 A That is correct.
10 Q And you said that Mr. Johnson handed you a list of duties.
11 How long before the election did Mr. Johnson hand you this list
12 of duties; do you remember?
13 A I do not remember the exact time. I did have enough time
14 to go over that list and I did ask him a question on one of my
15 duties. But that's all I can say for sure.
16 Q So you had -- if I understand it right, the election
17 instructions normally are a one-page document; is that correct?
18 A That is correct.
19 Q And you had enough time to be able to read the full page;
20 is that correct?
21 A Yes.
22 Q And I believe you said that you did ask questions based on
23 your reading of that document, correct?
24 A Yes.
25 Q And did Mr. Johnson answer all the questions that you

1 or --
2 A No. At that point the people observing the race had also
3 left.
4 Q Okay. So I know you said you don't recall about the time.
5 Do you recall about how soon before the election ended were
6 these last runners going by?
7 A If I had to pick a time, I would probably put it about
8 11:00, right about halfway through the election was when the
9 last runner had come through.
10 Q Now, at that point, let me ask you first, about how many
11 people had voted at this election?
12 A There were 16 -- or, you mean how many people had voted by
13 the time the race had ended, or how many --
14 Q I'm sorry, I wrote them both, but for the whole election,
15 about how many people voted?
16 A Sixteen.
17 Q And do you recall, had most of them already voted by the
18 time the Race For the Cure happened?
19 A A large majority of them had, yes.
20 Q And as these employees were voting, one of your roles was
21 to check off that that employee or that individual had been
22 there and was allowed to vote; is that correct?
23 A That is correct.
24 Q And the other observer also was checking off names; is
25 that correct?

1 A That is correct.
 2 Q So I'm going to hand you what's been marked as Regional
 3 Director's 1. I need you to take a look at that, please.
 4 Mr. Holmstrom, are you familiar with this document?
 5 A Yes.
 6 Q Is this the list of voters that you had checked off?
 7 A Yes.
 8 Q Now, there's two check marks at each name. Do you recall
 9 which check mark was yours? There's one on the left, one on
 10 the right.
 11 A I believe the one on the left was mine.
 12 Q Okay. So for each of these people that voted, you found a
 13 way to identify who it was, or to at least identify as far as a
 14 check mark, who it was that was present to vote; is that
 15 correct?
 16 A Yes.
 17 Q And you said that you were instructed -- I believe in
 18 Mr. Rosenfeld's cross-examination -- you were instructed to
 19 watch for anything unusual, and I believe there were some more
 20 things to your instruction. Who was it that gave you those
 21 instructions?
 22 A That was Ms. Taratko. Before the election she mentioned
 23 that that was part of the duties as an observer was just to
 24 make sure that there was no unusual individuals around, nothing
 25 unusual happening in the election, and to make sure that there

1 A That is correct.
 2 Q Now, is it fair to say that other than what you testified
 3 to already, that generally the area of the steps and the
 4 election area were generally absent of people?
 5 A Yes.
 6 Q Now, I know you said you didn't hear the conversations of,
 7 I believe it was Mr. Meyers with other individuals. Did you
 8 hear anybody from the time the election started until the time
 9 the polls were closed, instruct anyone how to vote as far as
 10 yes or no?
 11 A No.
 12 Q So then the only instructions that came to voters -- well,
 13 let me ask you this. While the voters was going on and the
 14 voters were challenged, Mr. Johnson had to instruct these
 15 voters as to what it means as far as the challenged ballot; is
 16 that correct?
 17 A That is correct.
 18 Q And is it fair to say that that's the -- as the voters
 19 were coming in, not the observers, but as the voters were
 20 coming in, that those were the only instructions that they were
 21 given by Mr. Johnson is how the vote process, including
 22 challenged ballots, how that works; is that correct?
 23 A That is correct.
 24 Q During this time, the Union's observer -- I believe you
 25 said that's Mr. Meyers; is that right?

1 was no rigging of the election as far as I could see.
 2 Q Okay. And as far as those instructions, was it also to
 3 inform the board agent during the election if there was
 4 anything unusual?
 5 A She did not say that specifically, but I made that
 6 inference that if I saw something wrong I needed to speak up
 7 and not just allow the election to go through.
 8 Q And during that election, you didn't inform Mr. Johnson of
 9 anything that you thought was unusual; is that correct?
 10 A That is correct.
 11 MR. L. SMITH: And if I could have a moment, Madam Hearing
 12 Officer.
 13 HEARING OFFICER STROUP SCAFFIDI: Yes.
 14 Q BY MR. L. SMITH: In any of the conversations that you
 15 heard Michael Johnson having with any of the individuals that
 16 were there, you never heard of him instructing anybody how to
 17 vote as far as whether to vote yes or vote no; is that correct?
 18 A That is correct.
 19 Q And just so the record is clear, when we're looking at,
 20 you've got the election area, and I think you said about 30 to
 21 40 feet was Las Vegas Boulevard. There was also a public
 22 sidewalk right next to Las Vegas Boulevard, correct?
 23 A Yes.
 24 Q And then there's a series of steps that come up before you
 25 ever get to the election area; is that correct?

1 A No. The Union observer was Mr. Fouts.
 2 Q Mr. Fouts, thank you. You didn't hear Mr. Fouts instruct
 3 anybody on how to vote; is that correct?
 4 A That is correct.
 5 Q And you were close enough to Mr. Fouts to be able to hear
 6 what he was saying; is that right?
 7 A Yes. I was sitting next to him.
 8 MR. L. SMITH: Madam Hearing Officer, I'd like to offer
 9 Regional Director's Exhibit 1.
 10 HEARING OFFICER STROUP SCAFFIDI: Any objections?
 11 MR. G. SMITH: None.
 12 MR. ROSENFELD: No objection.
 13 HEARING OFFICER STROUP SCAFFIDI: Regional Director's 1 is
 14 received.
 15 (Regional Director's Exhibit Number 1 Received into Evidence)
 16 Q BY MR. L. SMITH: Now, at no time when the voters came
 17 up -- I know you said that Mr. Johnson didn't require
 18 identification for at least the first voter, there was no time
 19 that you were instructed that you couldn't request
 20 identification from any prospective voter; is that right?
 21 A That is true.
 22 Q All right.
 23 MR. L. SMITH: I have no further questions.
 24 HEARING OFFICER STROUP SCAFFIDI: Any redirect?
 25 MR. G. SMITH: I do.

REDIRECT EXAMINATION

- 1 Q BY MR. G. SMITH: Could you --
 2 MR. G. SMITH: Can the witness be shown Exhibit 19 again?
 3 Employer's Exhibit 19 again?
 4 Q MR. G. SMITH: Have you still got it?
 5 A I still have it.
 6 Q Okay. Looking at the first picture on top there, you see a
 7 glass wall and a column essentially; is that correct?
 8 A Yes.
 9 Q And then revolving doors on to the right side?
 10 A Yes.
 11 Q Okay. And I think you said the observer table was kind of
 12 right in front of the -- up against the revolving door?
 13 A Yes.
 14 Q And then to the left of that you see the column, correct?
 15 A Correct.
 16 Q What is the distance -- the approximate distance from the
 17 column there to the glass wall behind it?
 18 A If I remember correctly, it's roughly around five,
 19 six feet between that pillar and that glass wall.
 20 Q Okay. Now, if the booth were in place the way it was on
 21 that day, and from the perspective of this picture, could you
 22 see the booth at all from where this picture was taken?
 23 A You might have been able to see an edge of it on either
 24 side of the pillar.
 25

- 1 Q So there was room between the column and the wall for the
 2 booth to stand?
 3 A Yes.
 4 Q Okay. Now, looking at this picture, to the left is south;
 5 is that correct?
 6 A Yes.
 7 Q And to the right north, of course. And we're facing west?
 8 A Correct.
 9 Q Okay. From the -- was the booth on essentially the west
 10 side of the column, then, from here?
 11 A Yes.
 12 Q Okay. And then the observer table was right over there in
 13 front of the opening of the door so that you could see the --
 14 A Correct.
 15 Q Okay. When the booth -- when you entered the booth, was
 16 the curtain that you entered facing north, south, east or west?
 17 A The curtain was on the east side.
 18 Q So that the voter's back, then, would be to the street?
 19 A Yes.
 20 Q Okay. Just wanted to make sure that was right.
 21 MR. G. SMITH: Nothing further.
 22 HEARING OFFICER STROUP SCAFFIDI: Do you have any
 23 additional questions, Mr. Rosenfeld?
 24 RECROSS-EXAMINATION
 25 Q BY MR. ROSENFELD: Mr. Holmstrom, take a look at picture

- 1 19B in this book. That was what Las Vegas Boulevard looks like
 2 from the steps, is that --
 3 A Yes.
 4 Q And, you know, the round things that are right at the
 5 bottom of the steps, correct?
 6 A Correct.
 7 Q And then there's a sidewalk?
 8 A Yes.
 9 Q And then the street?
 10 A Correct.
 11 Q And that's a median strip in the street, correct?
 12 A Yes.
 13 Q And were the runners and walkers on both sides of the
 14 strip?
 15 A Yes, they were.
 16 Q Okay. And the next picture, 19(c), that's looking from
 17 the steps up to where the booth was, correct?
 18 A Yes.
 19 Q And 19(d) looks along the front of the building, does it
 20 not?
 21 A It does.
 22 Q Okay. So the voting area was to your right?
 23 A Yes.
 24 Q And so there's that tree-lined area between the sidewalk
 25 and the building, correct?

- 1 A Yes.
 2 Q Where the steps are, that occupies what otherwise would be
 3 a tree-lined area?
 4 A Uh-huh.
 5 Q 19(e) shows the steps from the sidewalk, correct?
 6 A Yes.
 7 Q And 19(f), that shows the area behind the pillar, correct?
 8 A Correct.
 9 Q And 19(g), that's a picture of the steps going up to the
 10 building, correct?
 11 A Correct.
 12 Q So from that location to the area where the voting booth
 13 is, what, 30, 40 feet, easily?
 14 A Yeah.
 15 Q Okay. Do you remember the Union?
 16 A No.
 17 Q Would you like to join the Union?
 18 A I don't know enough about unions to say yes or no to that.
 19 Q Go learn. The unions do good jobs for working people.
 20 Thank you.
 21 HEARING OFFICER STROUP SCAFFIDI: Do you have additional
 22 questions?
 23 MR. L. SMITH: No further questions.
 24 HEARING OFFICER STROUP SCAFFIDI: Okay. I have some
 25 questions. Who is Rita?

1 THE WITNESS: Rita Taratko, it is my understanding, was
 2 management for Labor Plus overseeing these employees.
 3 HEARING OFFICER STROUP SCAFFIDI: Okay. At what time did
 4 the pre-election conference start?
 5 THE WITNESS: It started, oh, I'd say 9:30, 9:45, before
 6 the election. So 15 minutes or more before the election
 7 started.
 8 HEARING OFFICER STROUP SCAFFIDI: Okay. And present for
 9 the pre-election conference was you, Rita, the Board agent, and
 10 then a Union representative?
 11 THE WITNESS: Yes. And another gentleman that was with
 12 Rita Taratko.
 13 HEARING OFFICER STROUP SCAFFIDI: Oh, okay. Okay. During
 14 the pre-election conference, was there any discussion about a
 15 no-electioneering area? Do you recall those words being used?
 16 THE WITNESS: I don't recall the words no --
 17 electioneering area?
 18 HEARING OFFICER STROUP SCAFFIDI: Uh-huh.
 19 THE WITNESS: I do not recall those words.
 20 HEARING OFFICER STROUP SCAFFIDI: Okay. Was there any
 21 discussion about designating a particular area that would be
 22 controlled by the Board Agent?
 23 THE WITNESS: Not that I remember, no.
 24 HEARING OFFICER STROUP SCAFFIDI: Was there any discussion
 25 during the pre-election conference about voter ID?

1 other in front of that pillar.
 2 HEARING OFFICER STROUP SCAFFIDI: Okay. And was one voter
 3 approaching the table at a time?
 4 THE WITNESS: Yes, to start with.
 5 HEARING OFFICER STROUP SCAFFIDI: And then what happened?
 6 THE WITNESS: After I challenged the first voter and Mr.
 7 Johnson asked if I was going to be issuing this challenge to
 8 all the voters he then had the rest of the gentlemen come
 9 forward to the table to begin filling out the challenge
 10 paperwork all at once.
 11 HEARING OFFICER STROUP SCAFFIDI: When you say fill out
 12 the challenge paperwork, are you talking about the challenge
 13 ballot envelope?
 14 THE WITNESS: Yes, the ballot envelope and a little white
 15 challenge form. There was a challenge ballot envelope and a
 16 challenge form. They both required the same information.
 17 HEARING OFFICER STROUP SCAFFIDI: Were they given -- they
 18 weren't given a ballot though, is that correct?
 19 THE WITNESS: That is correct.
 20 HEARING OFFICER STROUP SCAFFIDI: Okay. So at what point
 21 were they given the ballot?
 22 THE WITNESS: They were given the ballot as Mr. Johnson
 23 called them up individually to the voting booth to actually
 24 vote.
 25 HEARING OFFICER STROUP SCAFFIDI: Okay.

1 THE WITNESS: No.
 2 HEARING OFFICER STROUP SCAFFIDI: Okay. So is the first
 3 time that it's brought up, voter ID is brought up, is when the
 4 first voter presents himself?
 5 THE WITNESS: Yes. I brought it up with Mr. Johnson as
 6 the first voter came forward and that was the only time it was
 7 brought up.
 8 HEARING OFFICER STROUP SCAFFIDI: Okay. Now were there a
 9 line of voters waiting to vote?
 10 THE WITNESS: By the time election, that we had started
 11 voting, three gentlemen had shown up. And by the time I had
 12 challenged the first individual there were about five or six --
 13 HEARING OFFICER STROUP SCAFFIDI: Okay.
 14 THE WITNESS: -- employees.
 15 HEARING OFFICER STROUP SCAFFIDI: Where did they stand?
 16 THE WITNESS: They were just standing --
 17 HEARING OFFICER STROUP SCAFFIDI: If you look at the
 18 pictures --
 19 THE WITNESS: Yeah. From the observer table, they were
 20 standing in front of this pillar just south of the observer
 21 table.
 22 HEARING OFFICER STROUP SCAFFIDI: Were they facing the
 23 pillar?
 24 THE WITNESS: They were kind of just -- they weren't lined
 25 up. They were kind of just grouped around talking with each

1 THE WITNESS: He then handed them a ballot.
 2 HEARING OFFICER STROUP SCAFFIDI: Okay. Was Mr. Myers
 3 ever asked to leave the area?
 4 THE WITNESS: No. No, he was not.
 5 HEARING OFFICER STROUP SCAFFIDI: Did you voice any kind
 6 of objection to the board agent at the time?
 7 THE WITNESS: I did not.
 8 HEARING OFFICER STROUP SCAFFIDI: Okay. Okay. And then
 9 you had said that you were never told that you could not
 10 request that gain.
 11 THE WITNESS: That is correct.
 12 HEARING OFFICER STROUP SCAFFIDI: So why didn't you? Is
 13 there a reason why you didn't ask?
 14 MR. ROSENFELD: Objection to relevance since he didn't --
 15 what's in his mind is irrelevant.
 16 HEARING OFFICER STROUP SCAFFIDI: I'd like to know. I
 17 mean he's saying --
 18 MR. ROSENFELD: Well, I'm objecting. You --
 19 HEARING OFFICER STROUP SCAFFIDI: -- he's saying, "I
 20 didn't know who the observers -- I didn't know who the voters
 21 were. I initially asked for ID and then I stopped." Why was
 22 there that change of heart?
 23 MR. ROSENFELD: Well, that's irrelevant.
 24 HEARING OFFICER STROUP SCAFFIDI: I'd like to know.
 25 MR. ROSENFELD: Well, I know you'd like to know, but it's

1 irrelevant whether you'd like to know.

2 HEARING OFFICER STROUP SCAFFIDI: Well, I'm going to
3 overrule the objection.

4 THE WITNESS: After we checked the first ID of the first
5 voter and I had issued a challenge, Mr. Johnson had then called
6 the rest of the voters forward to fill out the challenge
7 paperwork. And then as they went to vote, I -- honestly, I
8 forgot to continue asking for ID because I was trying to
9 explain the challenge and give the voters -- just make sure
10 that the voters were given the challenge paperwork and getting
11 their names marked off on the list as they went to vote.

12 HEARING OFFICER STROUP SCAFFIDI: Okay. And at what time
13 did Mr. Faust begin to serve as an observer?

14 THE WITNESS: I believe he was shown the text message that
15 he was going to be observer right about the time the second or
16 third voter went into the booth.

17 HEARING OFFICER STROUP SCAFFIDI: Okay. Okay. I don't
18 have any additional questions. Do the parties have any
19 additional questions? Mr. Smith.

20 MR. T. SMITH: I do, but go ahead, sir.

21 MR. G. SMITH: I have just one, I think.

22 FURTHER REDIRECT EXAMINATION

23 Q BY MR. G. SMITH: When you checked the names off you
24 didn't -- at that time that's -- the names that you checked off
25 were the names that they had written on the challenge

1 to go ahead and allow the question.

2 THE WITNESS: I did not know if -- they could have given
3 me a false name. That is correct.

4 MR. G. SMITH: Okay. Nothing further.

5 HEARING OFFICER STROUP SCAFFIDI: Do you have any?

6 MR. ROSENFELD: I'm not going to waste my time.

7 HEARING OFFICER STROUP SCAFFIDI: Do you have any
8 additional questions, Mr. Smith?

9 MR. T. SMITH: Yes, Madam Hearing Officer.

10 FURTHER RECROSS-EXAMINATION

11 Q BY MR. T. SMITH: There were some questions about
12 controlling the area. Was there any occasion where any of the
13 people in the race for the cure or people that were watching or
14 anyone else from the public came and walked up into what would
15 be the voting area?

16 A I remember two incidences. One, somebody came up, their
17 dog came running up the steps. It made it to the top of the
18 steps before they grabbed it. And then they went back down to
19 the street and continued the race. And then there was a second
20 incident not involved with the race. A couple came forward up
21 the steps. Mr. Johnson intercepted them at the top of the
22 steps and asked if he could help them. I guess they were lost.
23 He gave them some instructions. They went back down the steps
24 and went along their way.

25 Q So is it fair to say that Mr. Johnson didn't allow just

1 envelopes.

2 MR. ROSENFELD: Objection, leading.

3 MR. G. SMITH: Well --

4 HEARING OFFICER STROUP SCAFFIDI: Just rephrase it.

5 Q BY MR. G. SMITH: How did you know which names to check
6 off?

7 A As the men came forward, I simply asked them what their
8 name was and checked the name that they gave me against the
9 list.

10 Q So you don't know who they really were, if they were
11 giving you a false name or not?

12 MR. ROSENFELD: Objection. It's irrelevant. There's no
13 objection based -- there's no challenge. There's no objection
14 based on that.

15 HEARING OFFICER STROUP SCAFFIDI: There is an objection
16 based on voter ID. I'll allow it.

17 MR. ROSENFELD: Well, and perhaps he doesn't -- you know,
18 they pick a phony observer who's not employed with the
19 Employer.

20 HEARING OFFICER STROUP SCAFFIDI: I understand.

21 MR. ROSENFELD: So why are we even -- why is he
22 challenging the fact this gentleman doesn't do it because they
23 picked the wrong observer?

24 HEARING OFFICER STROUP SCAFFIDI: Well, I think that goes
25 to the merits of the objection itself, but even so, I'm going

1 anybody to walk up wherever they wanted.

2 A Yeah. That would be correct.

3 Q While you asked about the idea the first time that it was
4 brought up was with the voters, so there was -- did anyone
5 raise during the pre-election conference that you didn't work
6 for Labor Plus?

7 A No, it was not brought up.

8 Q Did anyone raise during the pre-election conference that
9 you wouldn't know who the voters would be?

10 A No.

11 Q Was anything brought up during the pre-election conference
12 that for you to be able to verify the identification of any of
13 these voters that you would need some type of ID?

14 A No, it was not brought up.

15 Q At any point during or before the election, whether it's
16 your conversations with Rita Taratko or anybody else from Labor
17 Plus, did anybody raise the issue of whether or how you would
18 verify the identity of any of the voters?

19 A No.

20 Q Did anybody from -- whether it's Rita Taratko or anybody
21 from the Employer, instruct you to request identification?

22 A No.

23 Q Further along the lines of voter identification, did you
24 have any instance where somebody came up, claimed that this is
25 their name, but that name had already been checked off of the

1 voter list?
 2 A No.
 3 Q So no attempted duplicate voters, is that correct?
 4 A That is correct.
 5 Q No further questions.
 6 HEARING OFFICER STROUP SCAFFIDI: Okay. Any additional
 7 questions for this witness by the parties?
 8 MR. G. SMITH: No. not me, Your Honor.
 9 MR. ROSENFELD: None.
 10 HEARING OFFICER STROUP SCAFFIDI: Okay. You can be
 11 excused. It is noon, but I suggest we at least finish. You
 12 have one more witness, is that correct?
 13 MR. G. SMITH: Yes. Yes, I do.
 14 HEARING OFFICER STROUP SCAFFIDI: Is there any objection
 15 to just continuing?
 16 MR. ROSENFELD: No, I'd like to.
 17 MR. G. SMITH: We could have about a five restroom break.
 18 HEARING OFFICER STROUP SCAFFIDI: Sure. Let's go off the
 19 record.
 20 MR. ROSENFELD: I object.
 21 HEARING OFFICER STROUP SCAFFIDI: Granted. Let's go off
 22 the record.
 23 (Off the record at 12:01 p.m.)
 24 MR. G. SMITH: Call Rita Taratko.
 25 HEARING OFFICER STROUP SCAFFIDI: Hold on. We're not on

1 Q Okay. Did that company at one time have an arrangement
 2 with the Wynn property?
 3 A It did.
 4 Q Did it involve the ShowStoppers show?
 5 A Correct.
 6 Q Okay. What was that arrangement?
 7 MR. ROSENFELD: Objection.
 8 HEARING OFFICER STROUP SCAFFIDI: What's the basis?
 9 MR. ROSENFELD: The best evidence would be a written
 10 agreement if there was one.
 11 HEARING OFFICER STROUP SCAFFIDI: Is there a written
 12 agreement?
 13 MR. G. SMITH: I don't know the answer to that, Your
 14 Honor.
 15 HEARING OFFICER STROUP SCAFFIDI: Okay.
 16 MR. ROSENFELD: Ms. Taratko, is there a written agreement
 17 or was there a written agreement?
 18 MR. G. SMITH: Can he do his cross-examination after I'm
 19 done?
 20 MR. ROSENFELD: It's voir dire.
 21 HEARING OFFICER STROUP SCAFFIDI: You need to ask for voir
 22 dire, first of all.
 23 MR. ROSENFELD: Oh, I'm sorry. I never ask for anything.
 24 I get in trouble.
 25 HEARING OFFICER STROUP SCAFFIDI: Secondly, let me just

1 the record.
 2 MR. G. SMITH: Oh, I'm sorry.
 3 HEARING OFFICER STROUP SCAFFIDI: Okay. We're back on the
 4 record.
 5 MR. G. SMITH: I call Rita Taratko.
 6 HEARING OFFICER STROUP SCAFFIDI: The button is
 7 underneath.
 8 Whereupon,
 9 RITA TARATKO
 10 having been duly sworn, was called as a witness herein and was
 11 examined and testified as follows:
 12 HEARING OFFICER STROUP SCAFFIDI: Okay. Please state and
 13 spell your name for the record.
 14 THE WITNESS: My name's Rita Taratko, R-I-T-A T-A-R-A-T-K-
 15 O.
 16 DIRECT EXAMINATION
 17 Q BY MR. G. SMITH: You emphasize the rat.
 18 A Yes, I do. That's so that it's pronounced properly as
 19 opposed to Taratko.
 20 Q Taratko.
 21 A It's not Taratko. It's Taratko.
 22 Q I've got the rat. What's your position at the Labor Plus?
 23 A Office manager for Labor Plus.
 24 Q And how long have you had that position?
 25 A Since the opening of the company.

1 say, if there is a written agreement I want the Employer to
 2 make an effort to produce it. Absent a written agreement, or
 3 actually in addition to a written agreement, I think the
 4 testimony regard a relationship between Wynn and the Employer
 5 is absolutely relevant to the challenge ballot issue and to
 6 Objections 1 and 2, so objection is overruled.
 7 MR. ROSENFELD: Well, I think we should find out if there
 8 is a written agreement first because that would be the best
 9 evidence.
 10 HEARING OFFICER STROUP SCAFFIDI: I agree and I've already
 11 instructed the Employer to make an effort to produce it if it
 12 exists, so I'm assuming that that --
 13 MR. ROSENFELD: So let's ask the --
 14 HEARING OFFICER STROUP SCAFFIDI: I'm --
 15 MR. ROSENFELD: Let's ask the witness if there was one.
 16 That's the easy way of doing it. I can do it.
 17 HEARING OFFICER STROUP SCAFFIDI: I would assume that by
 18 my instruction he will know to ask that question.
 19 MR. ROSENFELD: Okay.
 20 Q BY MR. G. SMITH: Did you participate in an agreement?
 21 A No, I did not.
 22 Q Do you know if one was written?
 23 A Yes, I do.
 24 Q Okay. And was it?
 25 A Yes.

1 Q Okay. Do you have it with you?
 2 A No.
 3 Q Okay. What was the arrangement?
 4 MR. ROSENFELD: Objection. The written document would be
 5 the best evidence.
 6 HEARING OFFICER STROUP SCAFFIDI: We don't have the
 7 written document right now, so I think the testimony is
 8 relevant to, again, the challenges and Objections 1 and 2, so
 9 objection overruled.
 10 Q BY MR. G. SMITH: What was the arrangement?
 11 A To provide the stage crew for the shows that ShowStoppers
 12 show.
 13 Q Okay. Now you describe it as the ShowStoppers show.
 14 That's just one -- is that in just one location at the Wynn
 15 hotel?
 16 A Correct.
 17 Q Okay. How long did that arrangement last?
 18 A Up until they terminated it May 9th of this year.
 19 Q Was it April or May?
 20 MR. ROSENFELD: Objection. She just said May 9th.
 21 HEARING OFFICER STROUP SCAFFIDI: He's clarifying that she
 22 has the correct date.
 23 MR. ROSENFELD: It wasn't clarification.
 24 THE WITNESS: We were notified prior to we got formal
 25 notice --

1 Q BY MR. G. SMITH: Oh, I see.
 2 A -- of termination May 9th of the agreement.
 3 Q Of the agreement. What about the employee relationships?
 4 A We were notified prior to that Wynn was going to be hiring
 5 them. I think it was April 17th that we were notified that
 6 they were going to be terminating our agreement with us and
 7 posting the jobs and everybody currently that was employed by
 8 us would have the ability to post for the job itself.
 9 Q Okay. And did that happen?
 10 A Yes, it did. On April 30th or May 1st, we were notified
 11 that the Wynn had officially hired five of those employees.
 12 Q Okay.
 13 HEARING OFFICER STROUP SCAFFIDI: Can we identify who
 14 those five were?
 15 Q BY MR. G. SMITH: Do you recall their names?
 16 A Off the top of my head, William Stephenson.
 17 Q I can tell you that. I can help with that if you just
 18 give me a second. I can find a document to help you.
 19 A William Stephenson, Heather Lewis, David Weigant, James
 20 Contini, and I think it might have been Eric Fouts. And that's
 21 just off the top of my head. That is not based on anything.
 22 Q Okay. What happened after that?
 23 A Then I think it was either May 4th or 5th that we were
 24 notified by the Wynn that they had taken on an additional six
 25 employees.

1 Q Okay.
 2 A During this what they called was a transition where they
 3 were taking all of the Labor Plus employees and putting them
 4 through their new hire process.
 5 Q But the original notice that you testified about earlier,
 6 that was the beginning of the process, this transition, is that
 7 correct?
 8 A Correct. And that we were notified of that on April 17th.
 9 Q Okay.
 10 MR. ROSENFELD: Your Honor, I'd move to strike. Can I
 11 have a continuing objection to any testimony about this
 12 relationship because we're not in this post-election objection
 13 based on the statements I made? Remember, our position is that
 14 this is not relevant for the post-election challenge given the
 15 fact that the party, that we stipulated to the elections.
 16 HEARING OFFICER STROUP SCAFFIDI: Right.
 17 MR. ROSENFELD: And what occurred here is irrelevant since
 18 it doesn't go to the challenge ballot issue in that sense.
 19 HEARING OFFICER STROUP SCAFFIDI: It goes to Objections 1
 20 and 2 though which are part of the order.
 21 MR. ROSENFELD: But, okay, but in terms of the challenge
 22 ballot, I just want a continuing objection to this testimony.
 23 HEARING OFFICER STROUP SCAFFIDI: Okay. Your objection is
 24 noted.
 25 Q BY MR. G. SMITH: What happened after the second group

1 went over?
 2 A There were sporadic notifications that individuals were
 3 finally moved over and that they were no longer our employees
 4 for that show, that they had been taken in-house by Wynn.
 5 Q Did you terminate those employees?
 6 A No.
 7 Q What happened to that relationship?
 8 A The relationships are there. Based on what our business
 9 does is we provide stage hands. It's very similar to Manpower
 10 where we'll get a client that calls us and says, "We need
 11 carpenters, electricians riggers, whatever, and the location."
 12 Once that job is done, the employees then go away and wait for
 13 a next assignment. So they are still currently on the books
 14 with Labor Plus awaiting another assignment.
 15 Q Okay. And could those assignments be to the Wynn hotel,
 16 but not the ShowStoppers show?
 17 A It very well could be, yes.
 18 Q Okay. When was the last -- when did the last employee
 19 work for you during that? When did that transition end, I
 20 guess is the question?
 21 A It would be that week prior to May 9th.
 22 Q Okay. And by May 9th then they were all gone?
 23 A Correct.
 24 Q Okay. Did you attend a free election conference for the
 25 election in this case on May 2?

1 A Yes, I was here.
 2 Q Okay. And what did you see when you arrived at the
 3 election place?
 4 A I arrived here around 9:00, 9:10, with Mike Long, who was
 5 the manager of Labor Plus. We met Corey on the stairs. Mr.
 6 Johnson came out of the building and explained that he'd be
 7 right back. He had to go get tables and chairs.
 8 Q And did he --
 9 A He brought out tables and chairs and we assisted him in
 10 setting it up. Initially he had set the table up on the far
 11 side and realized that it wouldn't work because the observers
 12 could not see the booth, so we moved the table over to by the
 13 doors.
 14 Q By the revolving doors?
 15 A By the revolving doors. He was a very nice man. He had
 16 conversations about he had an election prior to that at 2:00 in
 17 the morning. And he had friends in from Detroit for the boxing
 18 match. He was a very nice man.
 19 Q Okay.
 20 A And we continued to help set up. And then about 9:40, and
 21 this is all a guess. I wasn't watching closely. Apple Thorn
 22 from the IA showed up for the preconference.
 23 Q Okay.
 24 A Mr. Johnson started to go into an explanation where he set
 25 the instructions for the observers on the table and he

1 started to explain the process when I happened to catch people
 2 walking up out of the corner of my eye. And I turned and
 3 realized it was voters.
 4 Q Uh-huh.
 5 A Now it was my understanding that --
 6 MR. ROSENFELD: Objection to her understanding.
 7 HEARING OFFICER STROUP SCAFFIDI: I'm going to allow it.
 8 I mean it's --
 9 THE WITNESS: It is my understanding that we were not to
 10 be present while voters were coming in. So I looked at Mr.
 11 Johnson and I said, "Are we supposed to be here while there are
 12 voters here?" I said, "We have three coming up now." He said,
 13 "No, you are correct." He looked at his watch and said, "Be
 14 back at 12:02."
 15 MR. ROSENFELD: So you --
 16 HEARING OFFICER STROUP SCAFFIDI: 12:02?
 17 THE WITNESS: 12:02. it was a two hour voting process.
 18 Voting was to start at 10:00 and be done at 12:00.
 19 HEARING OFFICER STROUP SCAFFIDI: So he told them to come
 20 back at 12:02?
 21 THE WITNESS: He told us to come back at 12:02?
 22 HEARING OFFICER STROUP SCAFFIDI: Oh, told you to come
 23 back at 12:02?
 24 THE WITNESS: Yes, he told --
 25 HEARING OFFICER STROUP SCAFFIDI: Oh.

1 explained to us that that's what that was, that these were the
 2 instructions on what they were to do.
 3 Q How many observers were there?
 4 A At that point it was just the one appointed from Labor
 5 Plus, Corey Holmstrom.
 6 Q Uh-huh.
 7 A I did not see or know of any other observer.
 8 Q Okay.
 9 A When Ms. Thorn showed up it was just her.
 10 Q Okay. And what was going on on the street?
 11 A We were in the middle of Race for a Cure.
 12 Q Okay.
 13 A There were people walking by. We actually made mention a
 14 joke because there was a lady who had strapped on speakers on
 15 wheels and attached it to her hips and she was walking down the
 16 street.
 17 Q Okay. Were there people on the grass around the building?
 18 A There was at least one gentleman that I noticed that he
 19 was laying there. It looked like he needed a siesta on the
 20 grass.
 21 Q How far away from the stairs?
 22 A Fifty, a hundred feet.
 23 Q And were you there when any of the voters arrived?
 24 A The three of us, myself, Michael, and Apple, were standing
 25 there -- oh, and Corey. We were standing there and Michael

1 THE WITNESS: -- Michael, myself, and Apple to come back
 2 at 12:02. And the three of us left together.
 3 HEARING OFFICER STROUP SCAFFIDI: All right.
 4 Q BY MR. G. SMITH: Okay. And when you came back what
 5 happened?
 6 MR. ROSENFELD: Objection. It's irrelevant. It's after
 7 the election.
 8 HEARING OFFICER STROUP SCAFFIDI: I'm going to allow it.
 9 I mean it's all part of the election process. I mean I want to
 10 hear --
 11 MR. ROSENFELD: There's no objection to post election
 12 conduct. It doesn't make any difference if there's a --
 13 whatever happens.
 14 MR. G. SMITH: This is part --
 15 HEARING OFFICER STROUP SCAFFIDI: I think what they're
 16 trying to do is illustrate though what happened on the day of
 17 the election, so what transpired immediately at the close of
 18 the polls I'd like to know.
 19 Q BY MR. G. SMITH: When you arrived back were there still
 20 only one observer?
 21 A No. At that point, quite frankly, I can't answer that
 22 truthfully. I walked up and Mr. Fouts was sitting at the
 23 election table, the observer table, and at that point I didn't
 24 know what his purpose was there.
 25 Q Okay. Did you --

1 A Off to my left standing near the column was Eric Meyers.
 2 I don't understand what his purpose was there either at that
 3 point because they were part of the three that showed up at 10
 4 until 10:00.
 5 Q He was one of the three that showed up at 10 till 10:00?
 6 A Yes.
 7 Q Before the voting? And when you came back, Meyers was
 8 there?
 9 A Correct.
 10 Q Okay. And what about then what was happening on the
 11 street? What happened there?
 12 MR. ROSENFELD: Objection to relevance.
 13 THE WITNESS: By that point, the traffic was going
 14 through.
 15 HEARING OFFICER STROUP SCAFFIDI: Overruled.
 16 THE WITNESS: Cars were going through. The street was
 17 opened and I guess the event had been done with and they
 18 removed the barricades.
 19 MR. G. SMITH: Nothing further.
 20 HEARING OFFICER STROUP SCAFFIDI: Mr. Rosenfeld.
 21 CROSS-EXAMINATION
 22 Q BY MR. ROSENFELD: Ms. Taratko, you supplied labor to the
 23 Wynn for the stage crew, correct?
 24 A Correct.
 25 Q And did you issue paychecks to the workers or did Wynn do

1 MR. G. SMITH: We've never heard that argument. I'm not
 2 prepared to litigate a joint employer issue.
 3 MR. ROSENFELD: Well, again, let's be clear. There are
 4 Board cases that say even if you're closing down a facility or
 5 shutting it down or terminating a relationship and it turns out
 6 there's a successor or clear successor, a perfectly clear
 7 successor joint employer, then it's relevant because the
 8 certification which would issue would then end up going
 9 potentially to the Wynn if they were a joint employer. But the
 10 Wynn could object saying they weren't party to it, but that's
 11 their problem, not ours.
 12 MR. G. SMITH: But that's not for this issue. I mean this
 13 case needs to do with the election and the objections and the
 14 challenges. It doesn't have to do with --
 15 MR. ROSENFELD: They opened the door.
 16 HEARING OFFICER STROUP SCAFFIDI: Well, your objection
 17 though is that we erred in even having an election on the basis
 18 that these employees have no reasonable expectation of
 19 continued employment and it seems to me what he is saying, Mr.
 20 Rosenfeld is saying, is that they actually continued in the
 21 employ of the joint employer. I'm a little caught off guard
 22 because this is the first I'm hearing about a joint employer
 23 issue. This wasn't -- certainly isn't incorporated in the
 24 notice in any respect. I'm going to give you some leeway here
 25 to introduce some testimony about this. I'm not familiar with

1 that?
 2 A We did. Labor Plus issued paychecks.
 3 Q And who ran the crew at the Wynn? Who was in charge of
 4 the crew?
 5 A I don't understand the relevancy.
 6 HEARING OFFICER STROUP SCAFFIDI: It's not your job to
 7 object to the relevancy. Just answer the question.
 8 Q BY MR. ROSENFELD: Yeah. Who ran the crew at the Wynn,
 9 the stage crew?
 10 MR. G. SMITH: I object.
 11 HEARING OFFICER STROUP SCAFFIDI: On what basis?
 12 MR. G. SMITH: It doesn't have anything to do with the
 13 objections for the really.
 14 HEARING OFFICER STROUP SCAFFIDI: Where are you going with
 15 this?
 16 MR. ROSENFELD: To the Board --
 17 HEARING OFFICER STROUP SCAFFIDI: Is that being contested
 18 in this proceeding?
 19 MR. G. SMITH: We've never heard of that before.
 20 MR. ROSENFELD: They have stipulated they were joint
 21 employer with Wynn. And there are Board cases that say that
 22 it's relevant even if Employer is claiming to close or shut
 23 down if there's either a successor relationship or joint
 24 employer relationship because there would be a continuing
 25 bargaining obligation.

1 the cases that you're talking about, frankly. And, you know, I
 2 might cut you off at some point, but I'll grant you some
 3 latitude.
 4 MR. ROSENFELD: Ms. Taratko --
 5 MR. G. SMITH: Well, may I finish my objection? We are
 6 equally surprised by this and I have no preparation. I haven't
 7 looked at this issue. I haven't considered this issue. And if
 8 we're going to be getting into that, I can't participate.
 9 MR. ROSENFELD: Then he can walk out. It's okay with me.
 10 HEARING OFFICER STROUP SCAFFIDI: I'm going to grant you
 11 some latitude with respect to this line of questioning and then
 12 I'll take a break and consider the issue further. I certainly
 13 don't want to prejudice anyone in this proceeding. That isn't
 14 the purpose.
 15 MR. ROSENFELD: Well, wait, wait, wait a minute. You're
 16 saying that you're not going to prejudice anybody because he's
 17 unprepared. That's ridiculous.
 18 MR. G. SMITH: I'm unprepared for an issue that I don't
 19 know anything about. That's a due process violation.
 20 MR. ROSENFELD: That's not fair. Just because he got
 21 substituted in recently doesn't mean the -- screwed up here.
 22 They should have known about this. And what he's really afraid
 23 of is --
 24 HEARING OFFICER STROUP SCAFFIDI: Is this an issue that
 25 came up before the election?

1 MR. ROSENFELD: It wasn't an issue. We stipulated to an
2 election because of the current -- you know, the current law is
3 -- just got overruled by the board, so we didn't want to go for
4 that. Now he may know the board has decided to take that issue
5 on again and has announced that they're going to have briefing
6 on that issue. So this issue will now be back before the
7 board. But for purposes of whether the region should issue the
8 certification, the relationship with Wynn is relevant.

9 As I said, some of these cases the board has looked at
10 whether there's a successor. So if an employer leaves a
11 facility and there's a successor clearly coming in then the
12 certification becomes relevant. It's not an imminent closure.
13 And so that's why it's relevant, so give me the leeway. And
14 the fact is if you look at Employer Exhibit 3 they represented
15 that they were a payroll service, not an employer.

16 HEARING OFFICER STROUP SCAFFIDI: So going back to what I
17 said which is that I think it is relevant testimony with
18 respect to Objection 1 and 2 --

19 MR. ROSENFELD: Well, let me just finish then.

20 HEARING OFFICER STROUP SCAFFIDI: -- and then I would
21 grant you some latitude.

22 MR. ROSENFELD: Thank you.

23 HEARING OFFICER STROUP SCAFFIDI: And then I would take a
24 break to get my bearings straight and maybe touch base with --

25 MR. ROSENFELD: You can't touch --

1 do so.

2 Q Okay. Well, my question is Mr. Long runs Labor Plus,
3 correct?

4 A Correct.

5 Q What's his title?

6 A Manager.

7 Q Okay. And how many different sites did Labor Plus have at
8 this time?

9 A I would have to look that up. Otherwise I'd be
10 speculating and guessing.

11 Q Give us your best estimate.

12 A Four or five.

13 Q And Mr. Long was responsible for all four sites?

14 A He and I are.

15 Q And is --

16 A And most of that is providing personnel. What we do is we
17 make phone calls. A client has asked us to provide them with a
18 certain amount of people and a certain skill set. We make
19 phone calls based on our roster to fill those requirements and
20 needs.

21 Q And then you would call these workers and tell them to
22 report to the Wynn and go to work.

23 A We tell these employees to report to the client and take
24 their direction from them as it's them who hired us to provide
25 these services.

1 HEARING OFFICER STROUP SCAFFIDI: I can touch base with
2 not the regional director. That's who my recommendation goes
3 to. But just to explore this issue further and then we'll come
4 back to --

5 MR. ROSENFELD: No, you can't talk to Region 28 because of
6 the board --

7 HEARING OFFICER STROUP SCAFFIDI: I'm not talking to
8 Region 28. I'm talking to Region 27. And I'm not talking to
9 the regional director and my recommendation will in no way be
10 prejudiced or biased by my contacting someone who is more
11 familiar with this line cases. So --

12 MR. ROSENFELD: Well, then I would ask you --

13 HEARING OFFICER STROUP SCAFFIDI: So --

14 MR. ROSENFELD: Let me ask a few more questions.

15 Q BY MR. ROSENFELD: Who at the Wynn ran the stage crew?
16 Who was the supervisor? Who told them what to do?

17 A All I would have is hearsay. I have never been over to
18 the theater itself.

19 Q The fact is there was nobody from Labor Plus who was in
20 management who was a supervisor at the Wynn, correct?

21 A That's not what we do. Even if we provide services to an
22 outside client, we don't necessarily have somebody on the show
23 site with them.

24 Q Well, that's my --

25 A The client hires us to provide them with personnel and we

1 Q Okay. So the worker --

2 A We don't necessarily have a drawing or know in full detail
3 what the scope of work is that they're going to be performing.
4 They call us and let us know that they need a carpenter. So
5 once the carpenter arrives on site then he's given instruction
6 on what needs to be done, whether it's at the Wynn or any other
7 facility.

8 Q Okay. So when your workers show up it is the facility
9 directs them on a day to day basis as to what to do.

10 A The client, yes.

11 Q Okay. And who sets the pay rate? Does the client set the
12 pay rate?

13 A No. that is established through us.

14 Q Do you negotiate the pay rate with the client?

15 A No. Pay rates are not discussed whatsoever. What is
16 discussed is a fee for our services.

17 Q Is that a fee for -- so how is the fee based? Is it just
18 for referring people?

19 A No. The fee is based on us paying an employee a certain
20 amount of money with payroll taxes included on it and then a
21 profit for us.

22 Q So you charge the Wynn a certain amount per hour for each
23 worker.

24 A Correct.

25 Q Based on the wages you pay and some profit.

1 A Correct.
 2 Q And you negotiate that amount with the Wynn?
 3 A The client fee is negotiated. Rate of pay is not.
 4 Q But the total amount is paid by the Wynn for each hour is
 5 negotiated with the Wynn is it not?
 6 A For a fee. Has nothing to do with what they're getting
 7 paid. That is between us and the employee.
 8 Q I understand that, but you negotiate a total amount per
 9 hour that the Wynn pays for each carpenter or electrician or
 10 whoever it is, correct?
 11 A Correct. The same way you charge a fee for your services.
 12 Q And you then take that amount and pay part for wages and
 13 part for your profit.
 14 A Correct.
 15 Q But to be clear, when you send workers to -- when you send
 16 the stage hands to the Wynn you don't supervise what they do on
 17 the day to day basis. All the supervision is done by the Wynn.
 18 A As it is with all of our clients.
 19 Q So the Wynn sets the working hours, correct?
 20 A Correct.
 21 Q Tells them what to do.
 22 A Correct.
 23 Q Disciplines them if necessary.
 24 A No.
 25 Q Well, if they don't want somebody they tell you to -- if

1 immediately notifies us because it's our worker's comp, our
 2 liability, our responsibility to get this employee treatment.
 3 Q Okay. Does the Wynn have house rules about how the
 4 employees are to behave and what they're supposed to do?
 5 A I can't answer that.
 6 Q Okay. Do you know if the Wynn has any house rules about
 7 that?
 8 A I do not know any of that for fact. It would be hearsay.
 9 Q Or has anybody told you that they have house rules?
 10 MR. T. SMITH: I'm going to object now as far as relevant.
 11 One of the things is I understand the joint employer claim, but
 12 even in the order for the hearing the Wynn is not named, so if
 13 the Wynn was going to choose to be represented in this hearing,
 14 they don't have Counsel and now we're getting into testimony
 15 about what the Wynn does. And the Wynn is not here to be able
 16 to represent itself.
 17 HEARING OFFICER STROUP SCAFFIDI: Uh-huh.
 18 MR. T. SMITH: Not that it's anyone's place to make the
 19 objections for the Wynn, but we're getting into things that go
 20 beyond the order and what the board rules and regs say as far
 21 as what the hearing is supposed to address which is encompassed
 22 in the order. So I think we're starting to cloud the record
 23 and maybe get into some things that are irrelevant to the named
 24 employer here which is Labor Plus.
 25 MR. G. SMITH: I join that objection.

1 there's a problem with somebody they'll call you and you'll do
 2 it.
 3 A If disciplinary actions are required the Wynn would let us
 4 know what happened and it is up to us to discipline them.
 5 Q Right. And does the Wynn have the authority to tell you
 6 to not to send somebody?
 7 A Yes, they do. All of our clients do.
 8 Q And has that happened with your clients, that the clients
 9 called you up and said, "So and so did something. Don't send
 10 them back. We don't want them anymore."
 11 A Yes.
 12 Q And they have that power, correct?
 13 A Correct.
 14 Q Okay. So if somebody isn't going to show up for a day for
 15 sickness or some reason they would contact the Wynn and let
 16 them know they're not showing up.
 17 A Correct.
 18 Q And if somebody was hurt they would let the Wynn know
 19 about the accident.
 20 A Because of the property rules, even if they were not over
 21 there directly for Wynn, if there was another show in that
 22 facility, okay. Chrysler came in and they were doing a
 23 dealership there. It has nothing to do with the Wynn. It's
 24 their facility. Any injury that happens in one of the hotels,
 25 the hotel has to be notified of it. Okay. Then the Wynn

1 HEARING OFFICER STROUP SCAFFIDI: Do you want to respond?
 2 MR. ROSENFELD: It's irrelevant whether the Wynn is here
 3 or not because I'm not asking for any ruling affecting the
 4 Wynn. And then if you did issue a ruling that determines the
 5 joined party status, because the Wynn isn't here it wouldn't be
 6 bound by it, but Labor Plus would be bound by it because
 7 they're here represented. Theoretically there's no res
 8 judicata or collateral estoppel effect if somebody isn't here.
 9 I understand that. But that doesn't -- again, let's go back to
 10 their claim.
 11 Their claim is that the election shouldn't have been
 12 conducted because they were out of the venue. My point is they
 13 weren't out of the venue. The joint employer relationship was
 14 there, so they -- the joint employer relationship continued to
 15 some point and they weren't out of the venue in the sense that
 16 the venue closed and all these workers went someplace else or
 17 didn't go someplace else.
 18 And again, go back and look at these cases. The board has
 19 sometimes looked at whether there's successor or some other
 20 relationship, an alter ego relationship to determine whether
 21 the election should or shouldn't be conducted.
 22 MR. G. SMITH: If we're going to --
 23 MR. ROSENFELD: And I realize that the board, you know,
 24 ruled Sturgis and Oakwood Care, but that doesn't make any
 25 difference. I can still make my record here.

1 MR. G. SMITH: If we're going to go down this road, I'm
2 just telling you that I think it's -- we have a due process
3 right to know what we're supposed to litigate here.

4 MR. ROSENFELD: Well, they opened the damn door. They
5 filed the objections. It's theirs to litigate. I think it's
6 ridiculous to say that.

7 MR. G. SMITH: We didn't open the door.

8 MR. ROSENFELD: If they weren't smart enough to figure
9 this out and smart enough to figure out they were digging a big
10 hole for themselves by pursuing this, that's not my problem.
11 It's clear that Counsel screwed this up and never thought about
12 this problem and here I trapped him into it. And now he's
13 saying, "Oh, I didn't know any better." Well, that's their
14 idiocy. It's not my fault and it's not the Union's fault that
15 they couldn't figure these things out. And now they've got to
16 go back to the client, the Wynn, and explain how they screwed
17 up and now the Wynn may be responsible. It's not my fault that
18 they're that stupid.

19 MR. G. SMITH: Well, you're dead wrong, but even if you
20 were right, that doesn't make --

21 MR. ROSENFELD: And I can be stronger. It's stupidity on
22 their part.

23 MR. G. SMITH: Even --

24 MR. ROSENFELD: You know, if he wants to withdraw the
25 objections, then we're through. I offered them the opportunity

1 employer and the Wynn are joint employers.

2 MR. ROSENFELD: Why are you afraid of this? Why are you
3 afraid of this?

4 HEARING OFFICER STROUP SCAFFIDI: It's not that I'm afraid
5 of it, but.

6 MR. ROSENFELD: You are afraid of it.

7 HEARING OFFICER STROUP SCAFFIDI: I'm not afraid of it.
8 Trust me. I've been with the agency long enough. I'm not
9 afraid of it.

10 MR. ROSENFELD: Let me make the record.

11 HEARING OFFICER STROUP SCAFFIDI: But here's the thing.
12 No, I'm not going to allow you to make the record. And here's
13 the thing. I am bound to, you know, rule on what is
14 encompassed in the order. I do not think I need to reach the
15 issue of joint employer status in order to rule on objection 1
16 and 2. I think you've already gotten -- you've elicited
17 testimony already that the employees who were employed by the
18 employer are now employed by the Wynn presumably doing similar
19 work to what they were doing for the employer.

20 MR. ROSENFELD: But it's relevant that during the entire
21 time they were there they were employed jointly by the Wynn and
22 by Labor Plus.

23 HEARING OFFICER STROUP SCAFFIDI: And that is not
24 something that was ever brought up until this moment.

25 MR. ROSENFELD: Well, now wait a minute here. That's not

1 to withdraw the objections -- the hearing and then I don't have
2 to go down this path. But they opened the door.

3 MR. G. SMITH: We didn't open --

4 HEARING OFFICER STROUP SCAFFIDI: I actually -- I hear
5 what you're saying with respect to the joint employer issue. I
6 do not foresee in any circumstances in which my recommendation
7 would reach the issue of joint employer status. My
8 recommendation is going to be limited to, you know, ruling on
9 whether objection 1 and 2 should be sustained or not. I don't
10 think I need to reach the issue of joint employer status in
11 order to rule on those objections, so --

12 MR. ROSENFELD: Well, Objection 1 and 2 relate to the
13 question of whether the individuals have any continued
14 employment with the employer. If the employer is a joint
15 employer, they all had continued employment because they all
16 kept working at the Wynn. So this falls perfectly within that
17 claim. The individuals and the petition for a unit had
18 expectancy of continued employment with the employer. The fact
19 is they did because, as she's testified, they were all, almost
20 all of them hired by the Wynn.

21 HEARING OFFICER STROUP SCAFFIDI: Well, I was --

22 MR. ROSENFELD: But that was the joint employer.

23 HEARING OFFICER STROUP SCAFFIDI: I think we can reach the
24 issue of whether they're continuing to work at the Wynn without
25 having to reach the issue of whether they're joint -- the

1 actually accurate. We were aware of the situation. The Union
2 was. We didn't ask that the Region direct an election with a
3 joined employer because of Oakwood Care, Oak Care. We knew it
4 would end up in a long battle, so we chose deliberately to seek
5 the election of Labor Plus to get an expedited election. So
6 then --

7 MR. G. SMITH: For the purpose of giving --

8 MR. ROSENFELD: Excuse me. So we did that. The fact that
9 you didn't think about or the fact that Cornell Overstreet, no
10 matter how smart he is, didn't think about it, but certainly I
11 have no idea whether DLA Piper thought about this. Maybe they
12 did. Maybe they didn't. Maybe Mr. Smith was unaware of it.
13 That's not my problem, but the fact is we've been aware of this
14 problem all along. It's common in this industry to have this.

15 As she testified, that's the way they work. They send
16 stage hands and others and they don't supervise them. They're
17 a payroll service. Their commerce statement states that. This
18 is the way this industry works. And so I'm just proving that
19 the employment expectancy continued and that's why objections 1
20 and 2 need to be overruled. Whether it continues with a sole
21 employer or single employer, Labor Plus, or the joint employer
22 makes no difference. It only makes a difference for purpose of
23 the objection because you might find there was no expectancy of
24 continued employment with Labor Plus even though she said
25 they're still employees. I'm entitled to -- and so there was

1 an expectancy of continued employment because there was a
2 period at least between April 17th and May 11th when some
3 workers were employed by Wynn, some by Labor Plus. There was a
4 transition period. Now they're all employed by the Wynn.

5 There was a clear expectancy of employment. And I think I'm --

6 MR. G. SMITH: The very fact that he just said that he
7 knew, that the Union knew about this issue from day one, why
8 did they not include the Wynn in the petition?

9 MR. ROSENFELD: Well, why wasn't he listening? I'll say
10 for the third time because the current board law, no matter how
11 bad it is, is Oak Care or Oakwood Care that says you can't
12 force two employers to --

13 MR. G. SMITH: It doesn't --

14 MR. ROSENFELD: Excuse me. You can't force two employers
15 into an election. They can only do it voluntarily because of
16 Green and all those arguments. The Clinton board ruled
17 contrary in Sturgis. The Bush board in all its stupidity ruled
18 against it. And now the board in a case involved sheet metal
19 workers announced last week that they're going to reconsider
20 the doctrine. So we had the choice.

21 MR. G. SMITH: And what relevance does that have to
22 anything?

23 MR. ROSENFELD: Your Honor, we were a lot smarter than
24 they were and now they got trapped because they -- again, I
25 invite Mr. Smith to withdraw objections 1 and 2 and then this

1 that I'm not sure this is encompassed within the regional
2 director's order.

3 Q BY MR. ROSENFELD: Well, let me try this question -- these
4 questions then. You knew, the Wynn told you that they were
5 going to allow all the workers that were working there to apply
6 to continue working on the same show, correct?

7 A To apply for the position, correct.

8 Q Okay. Some of the men told you that, correct? Correct?

9 A Yes.

10 Q And these workers that worked at Wynn had worked for Labor
11 Plus on other shows in the past? Had some of them?

12 A No. They actually started with the company doing the
13 Wynn.

14 Q All right. And so you knew that Wynn was likely to hire
15 most of them to continue the ShowStoppers show, correct?

16 A That would be speculation.

17 MR. G. SMITH: Objection.

18 Q BY MR. ROSENFELD: You didn't know?

19 A I can't answer that.

20 Q Okay. Well, you knew as of at least sometime that five of
21 the workers were now working for the Wynn, correct?

22 A After I was notified by the Wynn, yes.

23 Q Okay. Do you know actually when they started working for
24 the Wynn, the date that they actually -- let me start over. Do
25 you know the actual date that they started working for the

1 issue goes away. But if he wants to fight about it, he opens
2 the door.

3 MR. T. SMITH: Madam Hearing Officer, if I could.

4 HEARING OFFICER STROUP SCAFFIDI: Yes.

5 MR. ROSENFELD: No, I object.

6 MR. T. SMITH: One of the things, there is a separate
7 avenue that this could have went that's not before us --

8 HEARING OFFICER STROUP SCAFFIDI: Uh-huh.

9 MR. T. SMITH: -- would be a CA charge alleging that the
10 Wynn --

11 HEARING OFFICER STROUP SCAFFIDI: Right.

12 MR. T. SMITH: -- as a joint employer or successor or some
13 other theory that is obligated to recognize the Union. And if
14 that were the case, this could have been, but is not a
15 consolidated complaint or a notice of hearing that would be
16 before --

17 HEARING OFFICER STROUP SCAFFIDI: Right.

18 MR. T. SMITH: -- somebody like an administrative law
19 judge. And what we have here is good, bad, or indifferent is
20 the objections that are listed in the order before us and
21 whether or not the joint employer issue is reasonably
22 encompassed within the scope of the specific objections. I
23 don't know what the answer to that is and I definitely
24 understand Mr. Rosenfeld's objections and Mr. Smith's
25 objections and I don't have a side to make in that other than

1 Wynn?

2 A I couldn't tell you what their hire date was on the Wynn.
3 I don't work for the Wynn.

4 Q All right. So you don't know whether it was May 11th or
5 May 15th. You don't know what day it was.

6 A I can tell you based off records on when they were on our
7 time sheets as opposed to not being there one day.

8 Q Okay. And what was the --

9 A Which coincides with the emails of when they were
10 employed.

11 Q Okay.

12 A But what the official hire date is for the Wynn, I can't
13 answer that. I'm not Wynn HR.

14 Q And is it your testimony that there's some -- that there
15 were five individuals whose names you gave us who were at some
16 point employed by the Wynn directly?

17 A Correct.

18 Q Okay. But you don't know exactly what date they were
19 employed by the Wynn?

20 A I know -- I can tell you what date. Not off the top of my
21 head. I would have to go and look it up, but I could tell you
22 the date that they worked for us and then the next time sheet
23 that came, Labor Plus time sheet that would come over where
24 their names were no longer there. And it coincided with the
25 email from the Wynn stating that these people were now Wynn

1 employees.
 2 Q But you don't know exactly what those dates were as you're
 3 sitting here?
 4 A Not sitting here, no.
 5 Q But you do know the last date when anybody was employed by
 6 -- or at least the last date for which you got payroll sheets
 7 was May 8, '11.
 8 A Our official termination of the agreement from Wynn is
 9 May 9.
 10 Q So when was the last -- what was the date of the last
 11 payroll sheet you got from The Wynn?
 12 A I can't answer that, not having it in front of me.
 13 Q Was it after May 9?
 14 A I can't answer that, not having it in front of me.
 15 Q Now, these payroll sheets, who fill the payroll sheets
 16 out?
 17 A The employees do. It is an Excel spreadsheet that has
 18 their names on it with their schedule times, and they come in
 19 and they initial that they were there. Sometimes the times are
 20 changed. If it was scheduled and they were asked to come in
 21 earlier or later, the time would be changed. And then upon
 22 leaving, they would initial it again to confirm that the hours
 23 were correct.
 24 Q And who set the schedules?
 25 A The schedules are set --

1 And I would offer to prove that there was a joint employer
 2 relationship from the moment that Labor Plus workers until
 3 sometime in May, when the workers were solely employed by The
 4 Wynn. And that goes to the expectancy. If you're a joining
 5 employee, then your expectancy is you continue to be employed
 6 by a single employer. You have an expectancy of continued
 7 employment. So I just want to be clear that I would offer to
 8 prove that and I would like to you accept that as an offer of
 9 proof.
 10 MR. G. SMITH: I'm not going to -- I'm going to instruct
 11 the witness not to answer this question.
 12 HEARING OFFICER STROUP SCAFFIDI: Would the employer
 13 stipulate that the employees continue to work at The Wynn
 14 performing the same work that they were performing for Labor
 15 Plus?
 16 MR. ROSENFELD: Before The Wynn.
 17 MR. G. SMITH: I will stipulate to that some of them do.
 18 Q BY MR. ROSENFELD: Ms. Taratko, how many of your workers
 19 continue to work for The Wynn; do you know?
 20 A Based on the emails that we have there were approximately
 21 14.
 22 Q How many did you have employed there?
 23 A Run of show crew is 14.
 24 Q So as far as -- were there any that were not employed by
 25 The Wynn?

1 MR. G. SMITH: Objection, objection.
 2 HEARING OFFICER STROUP SCAFFIDI: What's the basis of the
 3 objection?
 4 MR. G. SMITH: This is -- none of this has anything to do
 5 with what the objections are.
 6 HEARING OFFICER STROUP SCAFFIDI: Well, actually, I
 7 disagree. I think the last line of questioning has to do with
 8 whether -- the appropriate test is whether these employees were
 9 employed on the payroll ending date and on the date of the
 10 election. I think that's what he's getting at. And so I think
 11 that testimony is relevant as to whether these employees were
 12 still working for the employer on the date of the election. I
 13 don't know where the question about scheduling is going. Is
 14 that also to the joint employer issue?
 15 MR. ROSENFELD: It's to both issues.
 16 HEARING OFFICER STROUP SCAFFIDI: So just going back to
 17 the joint employer issue, I mean, I think it seems to me,
 18 again, just to repeat myself, that in order to rule on
 19 Objections 1 and 2, I do not need nor can I reach the issue of
 20 joint employer status.
 21 MR. ROSENFELD: Well, I want to be clear. I would offer
 22 to prove through this witness that every one of those workers
 23 had an expectancy of continued employment at The Wynn for a
 24 period of time as a joint employer through sometime in May and
 25 thereafter as a single employer with The Wynn.

1 A To my knowledge, based on assumption and hearsay and what
 2 people told me, but yes.
 3 Q And how many were not employed by The Wynn?
 4 A Three.
 5 Q And --
 6 HEARING OFFICER STROUP SCAFFIDI: Hold on. So I have a
 7 question out to Mr. Smith, which is that: Would you stipulate
 8 that the employees who worked for Labor Plus at the
 9 ShowStoppers show are now working for The Wynn at that same
 10 theater?
 11 MR. G. SMITH: Many of them are, and this is all set forth
 12 in our position statements.
 13 HEARING OFFICER STROUP SCAFFIDI: Okay. So I think that
 14 addresses this expectancy of continued employment at the
 15 theater. Whether The Wynn and Labor Plus constitute a joint
 16 employer is, again, an issue I'm not going to reach. And so I
 17 think you can argue, certainly, that if reasonable expectancy
 18 of continued employment is the appropriate test, there's
 19 evidence that these employees continued to work at that
 20 theater, and so arguably had a expectancy of continued
 21 employment. And so with that I don't know that we need to
 22 continue this line of questioning. I hear what you're saying
 23 with respect to the joint employer issue. I do not believe
 24 it's before me. And so with that, I would instruct you to
 25 continue on a different line of questioning.

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| <p style="text-align: right;">Page 101</p> <p>1 MR. ROSENFELD: I want to just to clarify that --</p> <p>2 Q BY MR. ROSENFELD: Again, how many did you have working at</p> <p>3 The Wynn show? I want to be clear with the numbers. You had</p> <p>4 16?</p> <p>5 A Are you asking how many worked full time or how many were</p> <p>6 included in subs? Subs are those who go in when somebody</p> <p>7 cannot make it.</p> <p>8 Q How many did you have full time?</p> <p>9 A There were 14 show runners.</p> <p>10 Q And do you know, of the 14 full time, how many -- all but</p> <p>11 three of them were working for The Wynn; as far as you know?</p> <p>12 A As far as I know.</p> <p>13 Q Were there any subs who were working for The Wynn?</p> <p>14 A I can't be sure of that. I'm not The Wynn. I can't</p> <p>15 answer who they hired. I do know who was on our payroll that</p> <p>16 was told when to come off, what dates they were no longer being</p> <p>17 employed by us, that The Wynn did hire them. They passed The</p> <p>18 Wynn's new hire process and background checks and all of their</p> <p>19 requirements that they deemed necessary to employ somebody.</p> <p>20 Q Let me ask, again, you have a written agreement with The</p> <p>21 Wynn; do you not? There is a written agreement with The Wynn?</p> <p>22 A Yes.</p> <p>23 Q Do you have that available electronically so you can send</p> <p>24 it to us so it can be put into evidence?</p> <p>25 A If instructed to do so, yes.</p> | <p style="text-align: right;">Page 103</p> <p>1 and have them emailed to Mr. Smith, the agreement?</p> <p>2 A I have to be authorized to release any information.</p> <p>3 Q I understand that. But it's physically possible to do?</p> <p>4 A Yes, it is physically possible.</p> <p>5 MR. ROSENFELD: Okay. Let's see what happens here.</p> <p>6 HEARING OFFICER STROUP SCAFFIDI: Okay. Now --</p> <p>7 MR. ROSENFELD: I have a few more questions.</p> <p>8 HEARING OFFICER STROUP SCAFFIDI: I was just going to say</p> <p>9 let's get past that.</p> <p>10 MR. ROSENFELD: Let me just address --</p> <p>11 Q BY MR. ROSENFELD: You felt -- let me just show you</p> <p>12 Employer Exhibit 3, which is the questionnaire on the Thomas</p> <p>13 information. You filled this out; did you not?</p> <p>14 A Did I? No, this was filled out by Dianne LaRocca.</p> <p>15 Q Okay. Did you sign it?</p> <p>16 A No.</p> <p>17 MR. ROSENFELD: Your Honor, Dianne LaRocca refers to the</p> <p>18 company the payroll figures. See that reference?</p> <p>19 HEARING OFFICER STROUP SCAFFIDI: Is this going to joint</p> <p>20 employer status?</p> <p>21 Q BY MR. ROSENFELD: Line 6, correct?</p> <p>22 A Correct.</p> <p>23 HEARING OFFICER STROUP SCAFFIDI: Mr. Rosenfeld, is this</p> <p>24 going to joint employer status?</p> <p>25 Q BY MR. ROSENFELD: And is it accurate that --</p> |
| <p style="text-align: right;">Page 102</p> <p>1 MR. ROSENFELD: All right. I would ask that you instruct</p> <p>2 her to have that emailed to the Region so we can put it into</p> <p>3 evidence.</p> <p>4 HEARING OFFICER STROUP SCAFFIDI: Is the employer planning</p> <p>5 on offering the written agreement?</p> <p>6 MR. G. SMITH: No. I mean, I'll go look, as you instruct</p> <p>7 it. But I'm not --</p> <p>8 HEARING OFFICER STROUP SCAFFIDI: What about the notice of</p> <p>9 termination of the contract? I mean it seems to me this goes -</p> <p>10 - it's absolutely relevant to the challenged valid ballot issue</p> <p>11 and to Objections 1 and 2. So to the extent that there is an</p> <p>12 agreement and there's a notice of termination of the contract,</p> <p>13 I think they're relevant and I think you should produce them to</p> <p>14 the extent that they exist.</p> <p>15 MR. G. SMITH: I understand.</p> <p>16 MR. L. SMITH: Madam Hearing Officer, to the extent that</p> <p>17 it helps facilitate, I can give my card with my email. If they</p> <p>18 can be emailed to me, I can print them so we have them here at</p> <p>19 the hearing as soon as we can get that sent to me and I can</p> <p>20 send it to the printer.</p> <p>21 HEARING OFFICER STROUP SCAFFIDI: Okay. Can you have that</p> <p>22 done, Mr. Smith?</p> <p>23 MR. G. SMITH: I don't know the answer to that.</p> <p>24 MR. ROSENFELD: Let me ask the witness.</p> <p>25 Q BY MR. ROSENFELD: Could you call someone at your office</p> | <p style="text-align: right;">Page 104</p> <p>1 HEARING OFFICER STROUP SCAFFIDI: Mr. Rosenfeld, is this</p> <p>2 line of questioning going to joint employer status? If it is,</p> <p>3 I'm going to ask you --</p> <p>4 MR. ROSENFELD: It also goes --</p> <p>5 HEARING OFFICER STROUP SCAFFIDI: Let's move on.</p> <p>6 MR. ROSENFELD: It goes to the expectancy because I'm</p> <p>7 going to --</p> <p>8 HEARING OFFICER STROUP SCAFFIDI: And I've already</p> <p>9 addressed that, I feel, so I'm going to ask you to move on.</p> <p>10 Q BY MR. ROSENFELD: Let me ask this: You have a roster of</p> <p>11 employees in your payroll service, correct?</p> <p>12 A Correct.</p> <p>13 Q And your payroll service, when you get a call from a</p> <p>14 client, you go to this roster, correct?</p> <p>15 A Correct.</p> <p>16 Q And you then call these workers and say, here, do you want</p> <p>17 to go to this show or that show and work as a stagehand</p> <p>18 carpenter or whatever it is, correct?</p> <p>19 A Correct.</p> <p>20 Q And then what you do is you issue the paychecks for these</p> <p>21 workers after you get the authorization for how many hours</p> <p>22 they've worked?</p> <p>23 A There's more -- a lot more entailed than that, but yes.</p> <p>24 Ultimately, that is the end result.</p> <p>25 Q You issue the paychecks. So it's correct to say that in</p> |

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1 terms of your relationship with all your employees it is as a
2 payroll service, correct?
3 A Our payroll is service Wells Fargo. That is who processes
4 the payrolls.
5 Q And all the workers who worked at the ShowStoppers are
6 still employed by --
7 A They are still eligible for work, yes.
8 Q They're still on your -- on your roster?
9 A Correct.
10 Q On the day of the election you arrived there about 9:00,
11 correct?
12 A Correct.
13 Q Do you know what time the Race for the Cure began?
14 A Not this one. I wasn't here.
15 Q There were people going in front of the Federal -- in
16 front of this building at the time you arrived, correct?
17 A Correct.
18 Q By the time the election started there were a lot less
19 going in front of the building, weren't there?
20 A Correct.
21 Q All right. Appeared to quiet down substantially by 10:00,
22 correct?
23 A With the exception of the band and everything going on
24 down the block, down the street, that didn't stop. That
25 continued during the entire event that I was here in front of

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1 the building.
2 Q But in terms of people going in front of the building,
3 that pretty much had evaporated because the race had gone by?
4 A It had decreased.
5 Q I just want to be clear on something. The first day or
6 date that you knew that there was a transition of your
7 employees to The Wynn was May 5? Do you know what the day is
8 when any employee first became employed by The Wynn?
9 A Again, I can tell you that I was instructed that I was as
10 of -- there were five of them their last day with Labor Plus
11 was April 30th, but they were employed by Wynn as of May 1st.
12 MR. ROSENFELD: Now we have this clear problem of joint
13 employer, if it's April 30th, because the election was May 2.
14 Our position is they were still employed by Labor Plus.
15 HEARING OFFICER STROUP SCAFFIDI: The five employees that
16 you're talking about, are they the five that did not vote in
17 the election? If I showed you the list --
18 THE WITNESS: No, these five -- these four voted.
19 HEARING OFFICER STROUP SCAFFIDI: Well, let me show you
20 the list. It's the original Director's Exhibit I. Can you
21 identify the five employees that you're talking about and state
22 whether they are marked as having voted?
23 THE WITNESS: Jonathan Contini was one the list for May 1,
24 April 30, May 1. He was on the list.
25 MR. G. SMITH: Your Honor, my I interrupt and suggest

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1 something to you? There are documents in here that show the
2 list of 21 people that were potentially eligible, two of which
3 were listed as non-employees by the employer, but they could
4 vote subject to challenge. And then there's another list from
5 the Regional Director showing the number of the individuals who
6 voted, actually voted. And the answer to your question, in
7 other words, is in these documents.
8 HEARING OFFICER STROUP SCAFFIDI: What document? Can you
9 point to it?
10 MR. G. SMITH: If you will give me a second.
11 HEARING OFFICER STROUP SCAFFIDI: Sure.
12 MR. G. SMITH: Employer's Exhibit 11 is the voter list
13 given to the Board and the union, and it lists -- on the last
14 page it lists the two employees who were to vote subject to
15 challenge, because their employment was questioned.
16 MR. ROSENFELD: That's right, but this lists all these
17 people because it was -- this voter eligibility list was
18 performed April 30th.
19 MR. G. SMITH: Of course.
20 MR. ROSENFELD: Everybody was on it, including the ones
21 who may be contested.
22 MR. G. SMITH: Right.
23 HEARING OFFICER STROUP SCAFFIDI: So then, yeah, so then
24 Ms. Taratko, so Jonathan Contini had moved over to Wynn as of
25 April 30th?

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1 THE WITNESS: Again, this is just based off of my memory.
2 HEARING OFFICER STROUP SCAFFIDI: Based on your best
3 recollection. So who else was on the list that moved over?
4 THE WITNESS: Let's see. James Herlihy.
5 HEARING OFFICER STROUP SCAFFIDI: And he did vote?
6 THE WITNESS: He did vote. Heather Lewis.
7 HEARING OFFICER STROUP SCAFFIDI: And she voted.
8 THE WITNESS: William Stephenson.
9 HEARING OFFICER STROUP SCAFFIDI: And he voted.
10 THE WITNESS: I think it was David Weigant.
11 HEARING OFFICER STROUP SCAFFIDI: And he voted. And so
12 other of those five, only Jonathan Contini didn't vote. The
13 other four, they weren't challenged because they were no longer
14 employed by the employer; is that right?
15 THE WITNESS: Correct.
16 HEARING OFFICER STROUP SCAFFIDI: They were just
17 challenged because of this argument they didn't have an
18 expectancy of continued employment?
19 THE WITNESS: With Labor Plus, correct.
20 HEARING OFFICER STROUP SCAFFIDI: They weren't -- no one
21 struck them from the list; is that right?
22 THE WITNESS: Correct.
23 MR. ROSENFELD: I think we need a stipulation from counsel
24 that effectively -- the issues. It's her statement --
25 HEARING OFFICER STROUP SCAFFIDI: The document itself does

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|---|--|
| <p style="text-align: right;">Page 109</p> <p>1 not reflect that they were stricken from the list.</p> <p>2 MR. ROSENFELD: I understand that, but that document was</p> <p>3 prepared before April 30th.</p> <p>4 HEARING OFFICER STROUP SCAFFIDI: I understand, but the</p> <p>5 election was held on 5/2, and this is -- so any changes to the</p> <p>6 list would have been made during the pre-election conference.</p> <p>7 MR. ROSENFELD: You're wrong, because -- you did ask the</p> <p>8 correct question, which is if the employer agrees that it is</p> <p>9 not challenging those four votes on the grounds they're no</p> <p>10 longer employed as of May 2, and we have a stipulation to that</p> <p>11 effect, then that doesn't raise the issue. Because between the</p> <p>12 date that that voter eligibility list was issued, which would</p> <p>13 have been two days after the approval of the stip, which was a</p> <p>14 week or so before that, or two weeks before that, that list was</p> <p>15 a week or two weeks old. I could go back and look at documents</p> <p>16 for exactly how old it was.</p> <p>17 But if counsel is willing to stipulate that those five or</p> <p>18 four are not being challenged charged because they were no</p> <p>19 longer employed by Labor Plus, we don't have to explore it.</p> <p>20 Her testimony isn't enough. We need a stipulation.</p> <p>21 HEARING OFFICER STROUP SCAFFIDI: Does the employer</p> <p>22 stipulate that they were not challenged because they were no</p> <p>23 longer employed by the employer on the date of election?</p> <p>24 MR. G. SMITH: No, I can't do that.</p> <p>25 MR. ROSENFELD: All right, fine. Then I get to go ask</p> | <p style="text-align: right;">Page 111</p> <p>1 be something for Mr. Smith to argue in a brief, maybe not</p> <p>2 necessarily something for the witness. I don't know the</p> <p>3 appropriateness of that.</p> <p>4 But it seems like the record has already been developed as</p> <p>5 far as the date when employment ended, and at least there's at</p> <p>6 least a couple of general objections as far as what employees</p> <p>7 or what the general objections are, you know, to the employees,</p> <p>8 including their expectation of employment. It seems like that</p> <p>9 has been established, without having getting to have go too far</p> <p>10 down that road and risk clouding the record.</p> <p>11 HEARING OFFICER STROUP SCAFFIDI: It's been established</p> <p>12 with respect to the five. There are 11 other challenged</p> <p>13 ballots.</p> <p>14 MR. G. SMITH: If you take a look at Employers Exhibit 18,</p> <p>15 it tells you who voted.</p> <p>16 MR. ROSENFELD: We understand that. So does Board --</p> <p>17 Regional Director's Exhibit 1, which is the list. Because it</p> <p>18 shows who is checked off. So we know who voted.</p> <p>19 HEARING OFFICER STROUP SCAFFIDI: Right. So what I need</p> <p>20 to know, I think what needs to be reflected in the record, is</p> <p>21 the date that the 11 other voters ended their employment with</p> <p>22 Labor Plus.</p> <p>23 MR. ROSENFELD: I don't think it makes any difference</p> <p>24 because as long as they're employed on that date of May 2, it</p> <p>25 makes no difference.</p> |
| <p style="text-align: right;">Page 110</p> <p>1 them, great. See, MR. Smith just can't do anything except open</p> <p>2 more doors.</p> <p>3 HEARING OFFICER STROUP SCAFFIDI: Well, I mean, certainly</p> <p>4 the order doesn't say anything about that these ballots were</p> <p>5 challenged for any other reason, other than they had no</p> <p>6 expectancy of continued employment. So if there was another</p> <p>7 basis for the challenge, where was it? Where is it documented?</p> <p>8 MR. G. SMITH: Maybe it should have been documented</p> <p>9 better, but I don't have authority to concede that that's not</p> <p>10 an issue.</p> <p>11 MR. ROSENFELD: Fine, let me ask some more questions about</p> <p>12 the joint employer relationship.</p> <p>13 MR. G. SMITH: No.</p> <p>14 MR. ROSENFELD: See, that's the point. You know, he's</p> <p>15 opened the door, he won't close it, he's afraid to do it, so I</p> <p>16 get to ask the questions.</p> <p>17 MR. G. SMITH: I'm not opening any doors.</p> <p>18 MR. L. SMITH: Let me see if I can -- to the extent that</p> <p>19 we need to create the record to support, you know, whether</p> <p>20 objections should be sustained or not, it sounds like the issue</p> <p>21 is the date that these employees left employment of Labor Plus.</p> <p>22 And whether by documents, which particular documents, I don't</p> <p>23 know that it would really matter, but the witness has already</p> <p>24 testified as to who she left employment by those dates. The</p> <p>25 actual objection that goes to the specifics, maybe that would</p> | <p style="text-align: right;">Page 112</p> <p>1 HEARING OFFICER STROUP SCAFFIDI: Well, I guess that's the</p> <p>2 other -- yeah, you could either ask when they ended their</p> <p>3 employment with Labor Plus or whether they were still employed</p> <p>4 with Labor Plus as of 5/2, the date of the election. But are</p> <p>5 11 other voters whose termination dates are unknown or</p> <p>6 conversely whether they were still employed on 5/2.</p> <p>7 MR. ROSENFELD: Madam Hearing Officer, they were never</p> <p>8 terminated. That's the point she made. They didn't terminate</p> <p>9 them.</p> <p>10 HEARING OFFICER STROUP SCAFFIDI: Terminated with respect</p> <p>11 to their employment at the theater.</p> <p>12 MR. ROSENFELD: Their employment was never terminated.</p> <p>13 They just kept working for the joint employer. That's my --</p> <p>14 HEARING OFFICER STROUP SCAFFIDI: Understood.</p> <p>15 MR. ROSENFELD: So you know --</p> <p>16 MR. G. SMITH: May I?</p> <p>17 MR. ROSENFELD: I didn't create this mess. All they had</p> <p>18 to do was not file the silly objection and they wouldn't have</p> <p>19 created this mess for themselves. But I take advantage of</p> <p>20 messes employers make. DLI counsel thinks they're so smart,</p> <p>21 they aren't so smart. So this Ms. LaRocca is going to have to</p> <p>22 explain to their client why she screwed up here by doing this.</p> <p>23 HEARING OFFICER STROUP SCAFFIDI: Well, just moving on --</p> <p>24 MR. ROSENFELD: They need to go find a different lawyer.</p> <p>25 HEARING OFFICER STROUP SCAFFIDI: Moving on, there are 11</p> |

1 other voters. I need to know what their status was as of 5/2.
 2 MR. G. SMITH: May I?
 3 MR. ROSENFELD: I'll offer a stipulation that the other
 4 11 --
 5 HEARING OFFICER STROUP SCAFFIDI: Are you able --
 6 MR. ROSENFELD: -- continued to be employed at The Wynn.
 7 HEARING OFFICER STROUP SCAFFIDI: That's not what I need
 8 to know. What I need to know is whether they were employed by
 9 Labor Plus at the ShowStoppers theater on 5/2.
 10 MR. ROSENFELD: I won't stipulate to that because I'll
 11 only stipulate --
 12 HEARING OFFICER STROUP SCAFFIDI: I'm not asking for a
 13 stipulation. I'm asking for Mr. Smith to introduce evidence
 14 that answers that question.
 15 MR. G. SMITH: I refer Your Honor to General Counsel's own
 16 exhibits. And it is exhibit -- it's the May 11, 2015, letter
 17 from DLA Piper. And it's part of the General Counsel's stack.
 18 I guess it's -- yeah, 1A. It's the letter in support. And it
 19 gives every detail that you're asking about. And if that is a
 20 concession that Mr. Rosenfeld needs, then he can have it from
 21 this document.
 22 MR. ROSENFELD: I didn't agree that that went in for the
 23 truth of the matter. The letter that counsel is referring to
 24 is also part of Exhibit 21, and you look at the bottom of page
 25 1, it claims that May 1st, the day before the election, five of

1 MR. ROSENFELD: I'll phrase it differently.
 2 HEARING OFFICER STROUP SCAFFIDI: Who went to Wynn on 5/1.
 3 MR. ROSENFELD: Let's try it this way. Five employees
 4 effective May 1 -- I'm sorry, there were five employees who
 5 received their last paycheck from Labor Plus for work performed
 6 on that day, and subsequent the paychecks were for work -- I'm
 7 sorry. I will agree that their paychecks changed for work
 8 performed on May 1, so they no longer received paychecks from
 9 Labor Plus, and that the paychecks they received had the name
 10 Wynn on them effective May 2, for work performed after May 2.
 11 I don't know whether they got those paychecks on May 2 or May 5
 12 or May 8. I am willing to stipulate that for work performed on
 13 May 2, the paycheck would have been from The Wynn. For work
 14 performed before that date, it would have been from Labor Plus.
 15 HEARING OFFICER STROUP SCAFFIDI: And you're talking about
 16 the five employees that are listed in this letter, Jonathan
 17 Contini, James --
 18 MR. ROSENFELD: Let me just -- let me just take a minute.
 19 If we can go off the record for a minute, let me talk to my
 20 folks and make sure I'm accurate.
 21 HEARING OFFICER STROUP SCAFFIDI: Let's go off the record.
 22 (Off the record at 1:11)
 23 HEARING OFFICER STROUP SCAFFIDI: Back record.
 24 MR. ROSENFELD: Madam Hearing Officer, I've talked with
 25 two of the stagehands who worked this show over here and they

1 the individuals in the petition for a unit commenced working
 2 for The Wynn, effectively terminating their employment with the
 3 bargaining unit. On May 5, six additional former bargaining
 4 unit employees commenced work with The Wynn. My position is
 5 they continued to work for the joint employer. You know, if he
 6 wants to continue to play this game, then he's going to have to
 7 eat it. You can't take a position and then restrict the
 8 evidence. They're the ones who walked on this plank and I'm
 9 going to saw it off.
 10 MR. G. SMITH: That's not true. The union is the one that
 11 never said -- raised this issue before today.
 12 MR. ROSENFELD: Well, Mr. Smith, it's because they were a
 13 lot smarter than DLA Piper. I don't blame Mr. Smith. He
 14 wasn't involved. DLA Piper charges them, what, \$800 an hour
 15 and they couldn't figure this out.
 16 HEARING OFFICER STROUP SCAFFIDI: Just stop. So would the
 17 parties stipulate that the only employees who ceased to be
 18 employed by Labor Plus at the theater --
 19 MR. ROSENFELD: No, I won't.
 20 HEARING OFFICER STROUP SCAFFIDI: I understand what you're
 21 getting at, but just bear with me for a moment.
 22 MR. ROSENFELD: I understand -- I will not, no --
 23 HEARING OFFICER STROUP SCAFFIDI: The five employees whose
 24 relationship with Labor Plus and/or The Wynn is in question are
 25 the five who went to Wynn --

1 say they don't believe that's accurate. They believe that they
 2 were still employed by Labor Plus on May 2.
 3 HEARING OFFICER STROUP SCAFFIDI: Okay. So is the
 4 employer in a position to present any evidence, be it
 5 documentary evidence or witness testimony, that can demonstrate
 6 whether the 16 challenges -- whether those voters were employed
 7 by the Labor Plus at the ShowStoppers theater on May 2?
 8 MR. G. SMITH: I think we can get that.
 9 HEARING OFFICER STROUP SCAFFIDI: Okay.
 10 MR. G. SMITH: I just need to get some time in my office
 11 and make the relevant calls.
 12 MR. ROSENFELD: Well, why --
 13 HEARING OFFICER STROUP SCAFFIDI: This goes to the heart
 14 of the challenges and to Objection 1. So I'm a little --
 15 MR. G. SMITH: Let me ask this. May I ask a question of
 16 the witness? Which I don't know the answer to. Do you still
 17 have the payroll sheets for employees on the dates that
 18 occurred in that period of time?
 19 THE WITNESS: Yes.
 20 MR. G. SMITH: I will get those.
 21 MR. ROSENFELD: I have a suggestion.
 22 HEARING OFFICER STROUP SCAFFIDI: Yes.
 23 MR. ROSENFELD: Why doesn't the witness -- why don't we
 24 take five minutes and have her call her office? Is there a way
 25 to electronically send them to the Region so you could look at

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1 them or you could look at them and tell us exactly -- could you
2 send them to the Region; is the question? Could you have them
3 electronically sent that would show that period?
4 MR. G. SMITH: To an email that --
5 MR. ROSENFELD: To Mr. Smith.
6 MR. L. SMITH: I could either, yeah, provide my email to
7 you or to the witness, if you are agreeable. Either way.
8 MR. ROSENFELD: Could you do that? I mean practically,
9 I'm just asking. Don't look at him. It's just a practical
10 question.
11 HEARING OFFICER STROUP SCAFFIDI: Whether it can be
12 accomplished.
13 MR. G. SMITH: Can do you that?
14 THE WITNESS: It can be accomplished.
15 MR. ROSENFELD: Thank you. I have a suggestion. Why
16 don't we take a half hour, let her accomplish and send it. WE
17 may be about to work out a stipulation as to what they show.
18 Send them to Mr. Smith, so I don't get to look at them yet. I
19 mean, send them to Tony Smith.
20 MR. L. SMITH: Either way.
21 MR. ROSENFELD: Just send them to him. He'll give --
22 let's do this, let's take a half hour, she can send -
23 HEARING OFFICER STROUP SCAFFIDI: This is still my
24 hearing. Hold on.
25 MR. ROSENFELD: No it isn't. I'm taking over.

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1 HEARING OFFICER STROUP SCAFFIDI: All right. Before we
2 move on, the records will show what they show. Do the parties
3 have any additional questions for this witness on any other
4 issue?
5 MR. ROSENFELD: I may have. Hang on. I'm not done with
6 my --
7 HEARING OFFICER STROUP SCAFFIDI: I know you were in the
8 middle of cross. I understand.
9 MR. ROSENFELD: But I may have more cross, depending on
10 what those records show as to the joint employer issue.
11 HEARING OFFICER STROUP SCAFFIDI: But are there any other
12 subjects that you were going to question her about?
13 MR. ROSENFELD: Yes.
14 Q BY MR. ROSENFELD: Labor Plus is a subsidiary of another
15 company called PRG? Do you know anything about this other
16 company?
17 A It's a lighting company down the street about two blocks
18 over.
19 Q Is Labor Plus a subsidiary of any other company?
20 A Subsidiary? No.
21 Q Is it owned by any other company?
22 MR. G. SMITH: I object.
23 HEARING OFFICER STROUP SCAFFIDI: Where is this going?
24 MR. G. SMITH: This doesn't have anything to do with
25 anything.

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1 HEARING OFFICER STROUP SCAFFIDI: Mr. Rosenfeld, what's
2 the -- where are you going with this line of questioning? The
3 commerce questionnaire reflects the employer's correct legal
4 name, whether it's a subsidiary, which it reflects that it is.
5 What's the purpose of this questioning?
6 MR. ROSENFELD: We think they're a joint employer with
7 another employer.
8 HEARING OFFICER STROUP SCAFFIDI: So let's move on from
9 that line of questioning.
10 MR. ROSENFELD: And it's different than a joint employer
11 with The Wynn.
12 HEARING OFFICER STROUP SCAFFIDI: Okay.
13 MR. G. SMITH: What difference does that make?
14 MR. ROSENFELD: Expectancy of employment.
15 HEARING OFFICER STROUP SCAFFIDI: Again, I --
16 MR. ROSENFELD: I'm going to prove that there's another
17 employer that they're a joint employer with, alter ego, and
18 that these workers have a continued expectancy of employment
19 with other this other employer, who just happens to be union.
20 MR. L. SMITH: Madam Hearing Officer, if I may? I think
21 again we're going outside of the order. But one of the things
22 that I would note is that -- I know you mentioned possibly
23 looking at the issue during a break, if we can get the employer
24 to agree to get to keep the witness just in case, depending on
25 if we table the issue for now. And after your review, if you

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1 decide that one way or the other that we need to revisit it,
2 that it's just on the table for now, that the witness will
3 still be available in case we do explore the issues. But I
4 think at this point, without that determination, we run the
5 risk of clouding the record as to issues that are not before us
6 under the order.
7 HEARING OFFICER STROUP SCAFFIDI: I agree.
8 MR. ROSENFELD: Wait a minute. The order only says what
9 they have to prove. It doesn't direct or determine what my
10 response to the union's response would be. I didn't have to
11 tell the Region in advance, oh, by the way, we're going to
12 oppose the objections or the challenged ballots issues. That's
13 a free-for-all at this point. I'm entitled to put on any
14 relevant evidence. I didn't have to clue anybody in. Again
15 I'll say that I'm really exorcised by this, which means upset,
16 annoyed, angered that DLA Piper, who claims to be such a good
17 lawyers, never figured this out. I don't have to teach them
18 out to -- they can bill \$800 an hour and if they don't figure
19 these things out, then this company can go back and hire a
20 lawyer who does know this stuff.
21 HEARING OFFICER STROUP SCAFFIDI: I believe I've already
22 addressed this in that I do not foresee any circumstance in
23 which my recommendation would reach the issue of joint employer
24 status. It's just not going to happen. I'm either going to
25 sustain Objections 1 or 2, or I'm not. But in order to do I do

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| <p style="text-align: right;">Page 121</p> <p>1 not need to reach the issue of joint employer status.</p> <p>2 MR. ROSENFELD: Let me be clear that I would offer to</p> <p>3 prove that there was a joint employer relationship with The</p> <p>4 Wynn, and that the employees had an expectancy of the continued</p> <p>5 employment at the ShowStoppers with the joint employer and/or</p> <p>6 with The Wynn as a single employer. As part of --</p> <p>7 HEARING OFFICER STROUP SCAFFIDI: Understood.</p> <p>8 MR. ROSENFELD: I want to be clear I'd present also to the</p> <p>9 evidence in that regard about supervision, for example, that</p> <p>10 there was no -- Labor Plus had no supervision. All the</p> <p>11 supervision came from the assistant technical director at The</p> <p>12 Wynn. She supervised the show. She supervised these workers.</p> <p>13 It wasn't anybody from Labor Plus.</p> <p>14 MR. G. SMITH: What difference does that make?</p> <p>15 HEARING OFFICER STROUP SCAFFIDI: Okay. So again, I'm</p> <p>16 going to limit the testimony on joint employer status. This is</p> <p>17 not the place for it. My recommendation is not going to reach</p> <p>18 it. I will consult with someone much smarter than me back in</p> <p>19 Region 27.</p> <p>20 MR. ROSENFELD: There can't be anybody else.</p> <p>21 HEARING OFFICER STROUP SCAFFIDI: During our break. And</p> <p>22 during the break I would ask the employer get the documents</p> <p>23 that I think are absolutely vital for me to determine whether</p> <p>24 these challenged ballots should be sustained or not.</p> <p>25 MR. ROSENFELD: Can I just be clear, there's another issue</p> | <p style="text-align: right;">Page 123</p> <p>1 would continue to work for the joint employer with The Wynn;</p> <p>2 and/or they continued to work with The Wynn as the successor,</p> <p>3 either a perfectly clear successor or Burns successor. So it</p> <p>4 wasn't a situation -- go back and read all the cases that Ms.</p> <p>5 LaRocca or whatever her name was cited. In every case you have</p> <p>6 an operation that closed down, done with, there was nobody</p> <p>7 left.</p> <p>8 MR. G. SMITH: I don't think that's true.</p> <p>9 MR. ROSENFELD: And with the exception of the shoe</p> <p>10 company, where it went from 491 employees to 16, but in every</p> <p>11 case the nature of the business changed, it went away, it was</p> <p>12 gone. This is a totally unique case, it's a different case,</p> <p>13 because you have the business continuing exactly the same way</p> <p>14 with the same people at the same location doing the same thing.</p> <p>15 HEARING OFFICER STROUP SCAFFIDI: Okay. You know, you can</p> <p>16 certainly, you know, take a special appeal if you need to, but</p> <p>17 I am not going --</p> <p>18 MR. ROSENFELD: If you're going to call somebody much</p> <p>19 smarter than you, and I don't mean to be sarcastic --</p> <p>20 HEARING OFFICER STROUP SCAFFIDI: Go for it.</p> <p>21 MR. ROSENFELD: Then go ahead.</p> <p>22 HEARING OFFICER STROUP SCAFFIDI: Go for it. I'm no</p> <p>23 offended.</p> <p>24 MR. ROSENFELD: I didn't mean it that way. I just meant -</p> <p>25 - I was just repeating your comment.</p> |
| <p style="text-align: right;">Page 122</p> <p>1 that relates to this, which is in our view Wynn is a perfectly</p> <p>2 clear successor. So that's another issue I'm entitled to</p> <p>3 demonstrate that, given the way this transition occurred, it</p> <p>4 was perfectly clear The Wynn was going to hire everybody and</p> <p>5 become an perfectly clear successor under Spruce Up. Or if not</p> <p>6 a perfectly clear successor under Spruce Up, a successor under</p> <p>7 Burns. And so there was a expectancy of continued employment</p> <p>8 for that reason.</p> <p>9 HEARING OFFICER STROUP SCAFFIDI: I'm not going to reach</p> <p>10 that issue either. That is a matter to be addressed in a</p> <p>11 potential 8A5 charge. It's not a matter -- I won't reach that</p> <p>12 in determining whether these objections should be sustained or</p> <p>13 not. The results will be certified or they won't be certified.</p> <p>14 MR. ROSENFELD: No, you have to reach --</p> <p>15 HEARING OFFICER STROUP SCAFFIDI: What implications that</p> <p>16 will have for any potential successor is a matter to be dealt</p> <p>17 with later.</p> <p>18 MR. ROSENFELD: No, you're not making a decision as to the</p> <p>19 impact on the successor; you're making a decision as to the</p> <p>20 expectancy of continued employment.</p> <p>21 HEARING OFFICER STROUP SCAFFIDI: Assuming that's the</p> <p>22 right test.</p> <p>23 MR. ROSENFELD: Assuming it is. But whatever the test is,</p> <p>24 there was an expectancy these workers would continue to work</p> <p>25 for Labor Plus because they continued to be employees; they</p> | <p style="text-align: right;">Page 124</p> <p>1 HEARING OFFICER STROUP SCAFFIDI: I'm not offended. By</p> <p>2 all means, do. You know, I feel comfortable in my decision</p> <p>3 that the testimony about joint employer status is irrelevant.</p> <p>4 MR. ROSENFELD: Unless we're going to take a break, then</p> <p>5 I'll figure out whether to call another witness.</p> <p>6 HEARING OFFICER STROUP SCAFFIDI: And so my suggestion is</p> <p>7 that we take a lunch break before we delve into --</p> <p>8 MR. ROSENFELD: Let me find out whether these guys have to</p> <p>9 be someplace else.</p> <p>10 (Counsel and Client confer)</p> <p>11 HEARING OFFICER STROUP SCAFFIDI: My suggestion is that we</p> <p>12 take an hour.</p> <p>13 MR. ROSENFELD: No, let's try and take less time. I'd</p> <p>14 like to get this done.</p> <p>15 HEARING OFFICER STROUP SCAFFIDI: So my suggestion is that</p> <p>16 we take the hour because this is evidence that has to be</p> <p>17 secured also, some documentary evidence, and I also want to</p> <p>18 consult. And then we'll back here at 2:30.</p> <p>19 MR. ROSENFELD: How about 2:15?</p> <p>20 HEARING OFFICER STROUP SCAFFIDI: At 2:30.</p> <p>21 MR. ROSENFELD: Well, that's an hour and 5 minutes.</p> <p>22 HEARING OFFICER STROUP SCAFFIDI: And we're adjourned.</p> <p>23 (Off the record at 1:22 p.m.)</p> <p>24 HEARING OFFICER STROUP SCAFFIDI: So were you able to get</p> <p>25 the documents?</p> |

1 MR. G. SMITH: Our witness is not back yet, but yes, I
 2 have --
 3 HEARING OFFICER STROUP SCAFFIDI: She's behind you?
 4 MR. G. SMITH: I'm sorry.
 5 HEARING OFFICER STROUP SCAFFIDI: I think she's behind
 6 you.
 7 MR. G. SMITH: Oh, I'm sorry. Yeah, we have the
 8 timesheets and I'd like her to explain them.
 9 HEARING OFFICER STROUP SCAFFIDI: Okay.
 10 MR. G. SMITH: If it's okay. This would be the employer's
 11 exhibit next in line, which I don't recall right now.
 12 HEARING OFFICER STROUP SCAFFIDI: You are reminded that
 13 you're still under oath.
 14 THE WITNESS: Yes.
 15 HEARING OFFICER STROUP SCAFFIDI: And we're at Employer 25
 16 at this point.
 17 MR. G. SMITH: 25. This would be 26.
 18 (Counsel confer)
 19 REDIRECT EXAMINATION
 20 Q BY MR. G. SMITH: Now, Ms. Taratko, take a look, if you
 21 will, to Employer's Exhibit -
 22 MR. G. SMITH: What were they?
 23 HEARING OFFICER STROUP SCAFFIDI: 25 and 26.
 24 Q BY MR. G. SMITH: Okay. Take a look at 25. What's the
 25 date covered by that timesheet?

1 they didn't sign in. They appear on the document, but they
 2 didn't sign in?
 3 THE WITNESS: Their names still appear on the document,
 4 but that coincides with the notification that they were hired
 5 by The Wynn.
 6 HEARING OFFICER STROUP SCAFFIDI: What does? The fact
 7 that they didn't sign in and out?
 8 THE WITNESS: Correct. And that there are no hours listed
 9 for them. And the total hour count is 60 and not 84, as it had
 10 been prior.
 11 HEARING OFFICER STROUP SCAFFIDI: Okay.
 12 THE WITNESS: With all 14 workers.
 13 Q BY MR. G. SMITH: And the next sheet shows a similar
 14 situation, right, for the same?
 15 A Correct. Saturday, May 2, shows the four employees not
 16 signing in.
 17 Q Okay.
 18 A And no hours associated with their names.
 19 Q And take a look at number 26, if you will. This continues
 20 on with the date sequence; is that correct?
 21 A Correct. There is no Sunday and Monday as the show is
 22 dark and nobody works over there, unless it's a special
 23 request.
 24 Q So the first workday there is Tuesday, May 5?
 25 A Correct.

1 A This one is from April 28, 2015, to May 2, 2015.
 2 Q Okay. And it looking at the first page, we're looking at
 3 this 4/28?
 4 A Correct.
 5 Q And it shows 14 people doing the work. Is that the
 6 commonplace event?
 7 A Correct. That is the run-of-show crew.
 8 Q And if there's a swing of a person in there they would be
 9 listed down at the bottom; is that correct?
 10 A Correct.
 11 Q So the next page is the next day, right?
 12 A Correct.
 13 Q And again 14 people on Wednesday, 4/29? And the same for
 14 Thursday, 4/30?
 15 A Correct.
 16 Q And then on May 1 there's a change. Not every line is
 17 filled out for the names. There's is neither Stephenson,
 18 Lewis, Herlihy, are those the only three that are not there?
 19 A There's four 4. Jonathan Contini, William Stephenson,
 20 Heather Lewis, James Herlihy.
 21 HEARING OFFICER STROUP SCAFFIDI: Okay. Hold on, wait.
 22 I'm sorry. What are you saying? What are you looking at?
 23 What date?
 24 THE WITNESS: It is May 1st.
 25 HEARING OFFICER STROUP SCAFFIDI: May 1st, okay. Oh, that

1 Q And I see only five employees listed, four employees
 2 listed as working.
 3 A Correct.
 4 Q Does that mean the others are no longer working with Labor
 5 Plus?
 6 A That is correct. That would also coincide with the
 7 notification from The Wynn that five additional employees or
 8 six employees had been hired by The Wynn.
 9 Q And Wednesday, the next page, May 6 shows the same four
 10 employees still working?
 11 A Correct.
 12 Q May 7 shows the same four employees working?
 13 A Correct.
 14 Q May 8 shows three employees working?
 15 A Correct.
 16 Q May 9 show three employees working?
 17 A Correct.
 18 Q That's the end of the week, isn't it?
 19 A Correct.
 20 Q What day of the week is that?
 21 A That is a Saturday.
 22 Q That is a Saturday. So the next workday would have been
 23 Tuesday, right, or Monday?
 24 A Correct.
 25 Q Tuesday?

1 A Yes, Tuesday the 12th.
 2 Q And there were no timesheets for that day?
 3 A No, there were not.
 4 MR. G. SMITH: I move the admission of 25 and 26,
 5 Employer's Exhibits.
 6 HEARING OFFICER STROUP SCAFFIDI: Any objection?
 7 MR. ROSENFELD: I need some voir dire, but I need to talk
 8 to my clients for just a minute.
 9 HEARING OFFICER STROUP SCAFFIDI: Okay. Let's go off the
 10 record we'll he's doing that.
 11 (Off the record at 2:37 p.m.)
 12 HEARING OFFICER STROUP SCAFFIDI Back on.
 13 VOIR DIRE EXAMINATION
 14 Q BY MR. ROSENFELD: Ms. Taratko, if you'll take a look at
 15 Employer's Exhibit 25, the first page, this shows 14 on the
 16 crew?
 17 A Yes.
 18 Q And each day they sign in, correct?
 19 A They initial it, yes.
 20 Q And the start, and who puts that time on there?
 21 A This is a computer printout. It's just an Excel
 22 spreadsheet that's printed out.
 23 Q And so they sign -- the workers sign in and sign out on
 24 each day?
 25 A Correct.

1 A -- did not make the white out. I cannot make that
 2 assumption.
 3 Q Well, somebody whited this out, correct?
 4 A It could have been somebody who signed in this the wrong
 5 spot.
 6 Q Excuse me. I don't -- the question is, did somebody --
 7 this is whited out, correct?
 8 A I get them electronically also. So what you're looking at
 9 is what I also get. So it appears that it was whited out.
 10 Q All right. And if you'll look at Heather Lewis, it
 11 appears as though the end time had something pasted over it and
 12 the total hours has something pasted over it and whited out,
 13 correct?
 14 A It appears so, yes.
 15 Q And with James Herlihy, it appears he signed in and that
 16 was whited out, correct?
 17 A It appears so, yes.
 18 Q Okay. And if you'll look at Mr. Stephenson, it looks like
 19 something where it says "start," and then those are both whited
 20 out or changed, correct?
 21 A It appears so.
 22 Q And -- but you don't know who did that?
 23 A No.
 24 Q And if you'll take a look at May 2, the day the Union won
 25 the election --

1 Q So this is a available at the work site for them to sign
 2 in and sign off?
 3 A Yes.
 4 Q But if we look at the one for April 30th, they're all
 5 signed in and signed out that day, if I'm not correct?
 6 A Yes.
 7 Q Now, if you'll look at the next one, which is 5/1, do you
 8 see Mr. Contini?
 9 A Yes.
 10 Q And where it says sign-in initials, doesn't that appear to
 11 you that something's been whited out there?
 12 A That's the way it came over. This was the first day of
 13 the --
 14 Q Excuse me?
 15 A -- change.
 16 Q The question is, it is whited out, right?
 17 A It appears so.
 18 Q Okay. And his name, he signed in -- he's both signed in
 19 and signed out, but those were initials -- excuse me. He
 20 signed in and signed out on this April 30 -- I'm sorry -- this
 21 May 5th -- I'm sorry. Let's start over. Mr. Contini signed in
 22 and signed out on May 1st, did he not, on the original
 23 document, as far as you know?
 24 A I was not there. I --
 25 Q Well --

1 MR. G. SMITH: Objection. They don't have the results yet.
 2 HEARING OFFICER STROUP SCAFFIDI True.
 3 MR. ROSENFELD: True. I'm not --
 4 HEARING OFFICER STROUP SCAFFIDI The date of the election?
 5 MR. ROSENFELD: The date the Union won the election.
 6 HEARING OFFICER STROUP SCAFFIDI The date of the election.
 7 MR. ROSENFELD: You see, if I say the day of the election,
 8 the implication is we didn't win. So I don't use those terms.
 9 Q BY MR. ROSENFELD: The day the Union won the election on
 10 May 2 --
 11 HEARING OFFICER STROUP SCAFFIDI Right.
 12 Q BY MR. ROSENFELD: -- do you see Mr. Contini appears to
 13 have signed in --
 14 MR. G. SMITH: What page are you on?
 15 MR. ROSENFELD: What page? From May 2, 2015, the day the
 16 Union won the election.
 17 MR. G. SMITH: Let me catch up. I'm still --
 18 MR. ROSENFELD: Saturday, May 2, the day of the race, that
 19 didn't interfere with the election. It's the last page of
 20 Employer Exhibit 25.
 21 MR. G. SMITH: Got it. Thank you.
 22 MR. ROSENFELD: Okay. I always like to be helpful to
 23 management.
 24 Q BY MR. ROSENFELD: Do you see on Mr. Contini it looks like
 25 he signed in and his initials were whited out, correct? But he

1 signed out, did he not?
 2 A It appears there.
 3 Q And Mr. Stephenson looks like his start and end times are
 4 on this sheet, correct?
 5 A It looks like it was there.
 6 Q And Heather Lewis, it looks like there was an end that was
 7 whited out as well as total hours and start time, correct?
 8 A It appears so.
 9 Q And Mr. Herlihy, he -- it looks like his start and end
 10 time was whited out, correct?
 11 A It appears so.
 12 Q And you don't know who did all this, do you?
 13 A No.
 14 Q So you don't know whether it was somebody at the Wynn or
 15 somebody at Labor Plus who did this?
 16 A It came over from the Wynn. If you see Monica-Marie's
 17 name at the bottom of it, she signs off authorizing the hours.
 18 The total hours match what has been removed.
 19 Q So who is Monica-Marie Coakley?
 20 A Monica-Marie Coakley is the assistant technical director
 21 over there who authorizes the time sheets and tells me that 60
 22 hours is correct, and that's what I am allowed to bill the Wynn
 23 for.
 24 Q I note that in the sheets for April 28 and April 29 and
 25 April 30 are all -- the times are all typed in by the Excel

1 any Wynn employee about what's going -- I'm sorry. Who's the
 2 gentleman who runs Labor Plus?
 3 A Michael Long.
 4 Q Do you know if Mr. Long has talked to Mr. Coakley (sic) at
 5 all about what's going on?
 6 A I can't answer that.
 7 Q Well, wouldn't it suggest that if you didn't talk to
 8 Ms. Coakley and Mr. Long didn't talk to Ms. Coakley, she
 9 actually ran the crew?
 10 A That's speculation again also.
 11 Q But you know Mr. Long weren't talking to Ms. Coakley,
 12 correct?
 13 A I know I was not.
 14 Q Okay. During the -- this period of April and May of 2015,
 15 were you talking to any of the stagehands about their work or
 16 work issues?
 17 A They would bring work issues into the office, if there
 18 were any.
 19 Q My -- that wasn't my question. Did you ever talk to them
 20 during that period about any work issue that you remember
 21 during that last month?
 22 A I don't remember. I don't recall.
 23 MR. ROSENFELD: Okay. Well, I -- I object to Employer
 24 Exhibit 25 because it's been modified and we don't have the
 25 original here. We don't know who made these changes. All they

1 spreadsheet, correct?
 2 A Correct.
 3 Q Okay. And so somebody modified the spreadsheet for
 4 May 1st, correct?
 5 A It appears so.
 6 Q But you don't know who did that either?
 7 A No.
 8 Q Okay. But Ms. Coakley is the assistant technical
 9 director?
 10 A Correct.
 11 Q And what does she do as the assistant technical director?
 12 A I can't tell you that.
 13 Q Do you have -- you have no idea?
 14 A What I would be giving is speculation. She's a Wynn
 15 employee. I don't know what her duties entail. I do know that
 16 she's been authorized by the Wynn to submit the sheets telling
 17 me what I am allowed to charge the Wynn.
 18 Q Have you ever talked to Ms. Coakley?
 19 A Once.
 20 Q Once. When did you talk to Ms. Coakley?
 21 A It was in regards to a workers' comp injury.
 22 Q Okay. Other than Ms. Coakley, have you ever talked to any
 23 Wynn employees about what's going on at the Wynn at the show?
 24 A No.
 25 Q Do you know if any employee of Labor Plus has talked to

1 do is --
 2 MR. G. SMITH: May I?
 3 MR. ROSENFELD: -- certainly prove my joint employer case.
 4 MR. G. SMITH: May I?
 5 HEARING OFFICER STROUP SCAFFIDI Yes.
 6 REDIRECT EXAMINATION (CONTINUED)
 7 Q BY MR. G. SMITH: With respect to the changes -- or the
 8 alleged changes, you don't know if that's true white out or
 9 not, right?
 10 A I have no idea, no.
 11 Q And you didn't -- and you don't know -- and you don't --
 12 well, do you know that no one -- that anyone in your office did
 13 any of the white outs?
 14 A I can say that with certainty, yes, because these e-mailed
 15 directly. They were scanned and e-mailed directly from Monica-
 16 Marie.
 17 Q Okay. So these are the way you received them in the first
 18 instance?
 19 A Yes.
 20 Q And it's on the basis of these, as they exist right here
 21 today, that you prepared your billings?
 22 A Correct.
 23 Q Okay.
 24 MR. G. SMITH: I think the objection's should -- I think
 25 that his objection should be overruled.

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|---|--|
| <p style="text-align: right;">Page 137</p> <p>1 MR. ROSENFELD: Well, let me clear --</p> <p>2 VOIR DIRE EXAMINATION</p> <p>3 Q BY MR. ROSENFELD: It's your view that someone at the Wynn</p> <p>4 made these changes, correct?</p> <p>5 A That's where they originated from.</p> <p>6 Q Listen to my question. It's your testimony that somebody</p> <p>7 from Wynn made these changes, correct?</p> <p>8 A Again, I'm assuming that is what happened considering they</p> <p>9 originated from the Wynn.</p> <p>10 Q Okay. Well, you didn't make the changes, correct?</p> <p>11 A No.</p> <p>12 Q Mr. Long didn't make the changes, correct?</p> <p>13 A No.</p> <p>14 Q Nobody at Labor Plus made the changes, correct?</p> <p>15 A Correct.</p> <p>16 Q Okay. The only people in the whole world who are left who</p> <p>17 could have made those changes would have been an employee of</p> <p>18 the Wynn, correct?</p> <p>19 A Or our stand hands who have access to these also.</p> <p>20 Q Okay. So it's either the stagehands or somebody at the</p> <p>21 Wynn who made the changes?</p> <p>22 A Correct.</p> <p>23 MR. ROSENFELD: I still object on the grounds that we don't</p> <p>24 have the originals.</p> <p>25 HEARING OFFICER STROUP SCAFFIDI Okay. Let me just ask</p> | <p style="text-align: right;">Page 139</p> <p>1 THE WITNESS: April 30th -- or May 1st -- no. They were</p> <p>2 off May 1st. April 30th was the last --</p> <p>3 HEARING OFFICER STROUP SCAFFIDI April 30th --</p> <p>4 THE WITNESS: -- day --</p> <p>5 HEARING OFFICER STROUP SCAFFIDI -- is the last date --</p> <p>6 THE WITNESS: -- that they were --</p> <p>7 HEARING OFFICER STROUP SCAFFIDI -- they were referred?</p> <p>8 THE WITNESS: -- on Labor Plus.</p> <p>9 HEARING OFFICER STROUP SCAFFIDI Okay. You can continue.</p> <p>10 MR. G. SMITH: I move for the admission of those documents.</p> <p>11 HEARING OFFICER STROUP SCAFFIDI They're accepted.</p> <p>12 (Employer Exhibit Numbers 25 and 26 Received into Evidence)</p> <p>13 MR. G. SMITH: Okay. The other documents that you wanted</p> <p>14 us to give were the contract and the termination the contract.</p> <p>15 And I cannot provide those. I'm told that they have some very</p> <p>16 strong confidentiality agreements within them and that they</p> <p>17 just -- there's a lot of confidential information contained in</p> <p>18 them about the business affairs of both of these companies, and</p> <p>19 they -- neither of them -- well -- and my client does not want</p> <p>20 them disclosed.</p> <p>21 MR. ROSENFELD: Well, I would like for the Hearing Officer</p> <p>22 to issue a subpoena duces tecum, I'll serve it on them, the</p> <p>23 witness, and then we'll just come back in a week when they</p> <p>24 produce them. I mean you can't walk -- you know, the Hearing</p> <p>25 Officer said they were relevant. He can't walk in and now say</p> |
| <p style="text-align: right;">Page 138</p> <p>1 before I rule on the objection, in the order it mentions</p> <p>2 three -- wait, one, two -- yeah, three people who are not on</p> <p>3 this list. Can you explain why Chris Portzer is not on this</p> <p>4 list?</p> <p>5 THE WITNESS: Swing employee. They work as needed.</p> <p>6 HEARING OFFICER STROUP SCAFFIDI Douglas Tait?</p> <p>7 THE WITNESS: Swing employee.</p> <p>8 HEARING OFFICER STROUP SCAFFIDI David Weigant?</p> <p>9 THE WITNESS: Weigant.</p> <p>10 HEARING OFFICER STROUP SCAFFIDI Weigant?</p> <p>11 THE WITNESS: Swing employee.</p> <p>12 HEARING OFFICER STROUP SCAFFIDI Okay. I'm going to allow</p> <p>13 this document for the reason that it shows who was employed on</p> <p>14 the date of the election, which numbers ten employees. Beyond</p> <p>15 that, I want to ask whether the Employer ever paid Jonathan</p> <p>16 Contini, William Stephenson, Heather Lewis or James Herlihy --</p> <p>17 THE WITNESS: Herlihy.</p> <p>18 HEARING OFFICER STROUP SCAFFIDI -- past this date? Past</p> <p>19 5 --</p> <p>20 THE WITNESS: No, we have not.</p> <p>21 HEARING OFFICER STROUP SCAFFIDI -- past 5/2? They have</p> <p>22 not been referred out to the theater pasted 5/2?</p> <p>23 THE WITNESS: No.</p> <p>24 HEARING OFFICER STROUP SCAFFIDI When was the last date</p> <p>25 that they were referred to the theater?</p> | <p style="text-align: right;">Page 140</p> <p>1 they're not. Now, if there's some financial data on there,</p> <p>2 like the price, I would not object if that were redacted</p> <p>3 because I don't necessarily -- I can make an argument about</p> <p>4 relevance but I don't want to spend a lot of time doing it.</p> <p>5 Putting aside that, there can't be anything that's</p> <p>6 confidential in it, at least the --</p> <p>7 HEARING OFFICER STROUP SCAFFIDI More confidential than the</p> <p>8 agreement itself would be the termination of the agreement. I</p> <p>9 mean it goes directly to your argument that you're no longer</p> <p>10 providing labor to the theater.</p> <p>11 MR. G. SMITH: Uh-huh.</p> <p>12 MR. ROSENFELD: But I want to --</p> <p>13 HEARING OFFICER STROUP SCAFFIDI What is --</p> <p>14 MR. ROSENFELD: -- I want a subpoena. I want touch this.</p> <p>15 HEARING OFFICER STROUP SCAFFIDI What is -- what is the</p> <p>16 issue with respect to the termination of the contract that</p> <p>17 notification?</p> <p>18 MR. G. SMITH: We didn't discuss them separately with my</p> <p>19 client. But it -- if you want me to go back and try again I</p> <p>20 will. But I'm told that they are confidential.</p> <p>21 MR. ROSENFELD: Well, that's ridiculous. Just because they</p> <p>22 think it's confidential doesn't mean they're not for this --</p> <p>23 you know, they're the ones who are walking in here taking in</p> <p>24 position, which I think is silly, but nonetheless they get to</p> <p>25 do, which is that they're no longer the Employer. And I get to</p> |

36 (Pages 137 to 140)

1 argue, no, that's not correct in that agreement and that
2 reflects the employment relationship. So now they're trying to
3 prevent you from seeing that critical document again, and they
4 can delete the financial information, as far as I'm concerned.
5 I don't think you need it. Which I can't understand what would
6 be confidential about what is probably a typical relationship
7 between a payroll service and an employer like the Wynn. And
8 maybe I'll ask the witness what she says is -- what is
9 confidential or not.

10 HEARING OFFICER STROUP SCAFFIDI I think more -- more
11 important than -- than the agreement itself -- I mean the
12 agreement, it is what it is. The fact is the Employer is
13 contending they're no longer providing work or manpower
14 essentially to the theater. That goes directly to the
15 objection and to the challenged ballots. It seems to me it's
16 incumbent on the Employer to produce something to demonstrate
17 somehow that they're no longer providing labor to the theater.

18 MR. G. SMITH: I think these documents --

19 HEARING OFFICER STROUP SCAFFIDI If the Employer's --

20 MR. G. SMITH: -- do.

21 HEARING OFFICER STROUP SCAFFIDI -- going to refuse to
22 provide it, then I will be left with deciding the case based on
23 the evidence that's here. And if all you're able to offer,
24 just assertions, that you're no longer providing labor, I mean
25 then -- then I will have to decide how much weight to give

1 that.

2 MR. G. SMITH: Well, it seems to me that the -- that the
3 time sheets show exactly that point.

4 HEARING OFFICER STROUP SCAFFIDI I don't know that the time
5 sheets are -- really demonstrate that. I mean we have a time
6 sheet that only goes -- the last date is 5/5. For all I know,
7 these people were on vacation.

8 MR. ROSENFELD: Well, actually, the last time sheet that
9 they provided is 5/8.

10 HEARING OFFICER STROUP SCAFFIDI I guess, well, to that,
11 let me just ask, were -- just going to 5/2, because that was
12 the easiest date to look at, you've already said that you have
13 not -- you haven't paid Jonathan Contini, William Stephenson,
14 Heather Lewis and James Herlihy past 5/2 for work performed on
15 4/30; correct?

16 THE WITNESS: Correct.

17 HEARING OFFICER STROUP SCAFFIDI Okay. And then the next
18 time sheet is for 5/5. And --

19 MR. ROSENFELD: No.

20 HEARING OFFICER STROUP SCAFFIDI 5/2. And the next time
21 sheet is 5/5.

22 MR. ROSENFELD: Right.

23 HEARING OFFICER STROUP SCAFFIDI Okay. So you have a total
24 of five employees performing work on 5/5; Hector Lugo, Kendall
25 Zobrist, Luke Cresson, Trent Uterback, Matt White. Who is

1 Matt White?

2 THE WITNESS: Matt White was a mistake on their part. He
3 was a new hire by the Wynn and he signed in on the wrong paper.

4 HEARING OFFICER STROUP SCAFFIDI He never worked for Labor
5 Plus?

6 THE WITNESS: He never worked. He is not an employee of
7 Labor Plus ever.

8 HEARING OFFICER STROUP SCAFFIDI Okay.

9 MR. L. SMITH: Madam Hearing Officer?

10 HEARING OFFICER STROUP SCAFFIDI Yes.

11 MR. L. SMITH: To the extent that it would help in my role
12 to help complete the record, if the Employer is willing to send
13 a copy to my e-mail, I can open it and delete it after printing
14 for Mr. Smith to review and allow him to borrow a -- like magic
15 marker to redact the portions that he believes is confidential,
16 to try to facilitate the record in a way that if the Employer
17 is interested in avoiding any possibility of an adverse
18 inference, so that those documents can be introduced, if
19 possible. If they're willing, I'd be willing to do that.

20 MR. G. SMITH: I'm willing to try.

21 HEARING OFFICER STROUP SCAFFIDI Okay.

22 MR. G. SMITH: Yeah. Thank you. I appreciate that.

23 HEARING OFFICER STROUP SCAFFIDI Okay. And, again, I think
24 the only thing -- you know, I'm not interested in having a big
25 debate about the agreement itself. I think it's more important

1 to see the termination notice.

2 MR. L. SMITH: I agree.

3 HEARING OFFICER STROUP SCAFFIDI Okay.

4 MR. ROSENFELD: Well, I -- I dispute that. I -- I -- the
5 agreement itself is probably more relevant. I mean I have some
6 more questions of her.

7 HEARING OFFICER STROUP SCAFFIDI I -- I understand. We're
8 going to continue with her.

9 And so my suggestion would be that we'll take a break at a
10 later point so that you can get that termination notice, okay,
11 and redact it as --

12 MR. ROSENFELD: Well, what about the contract?

13 HEARING OFFICER STROUP SCAFFIDI I don't think the contract
14 is -- again, I --

15 MR. ROSENFELD: Now this is --

16 HEARING OFFICER STROUP SCAFFIDI It's not --

17 MR. ROSENFELD: -- ridiculous.

18 HEARING OFFICER STROUP SCAFFIDI -- completely relevant to
19 this issue.

20 MR. ROSENFELD: You're -- how can you say the contract
21 isn't relevant to the relationship here and to who is employed
22 and how long?

23 HEARING OFFICER STROUP SCAFFIDI I've already told you that
24 we're not going to get into this joint employer issue.

25 MR. ROSENFELD: Well, it goes beyond the joint employer.

| | |
|---|--|
| <p style="text-align: right;">Page 145</p> <p>1 It goes to who the employer is. You know, the fact is --</p> <p>2 HEARING OFFICER STROUP SCAFFIDI You petitioned. You</p> <p>3 petitioned to represent employees of Labor Plus. It's a little</p> <p>4 late in the game to be asking who the employer is.</p> <p>5 MR. ROSENFELD: No. But they're the ones who sabotaged,</p> <p>6 they're the ones who engaged in terrorism by ending the</p> <p>7 contract. We don't think the Wynn did it. We think if the</p> <p>8 Wynn did it it was because of Union activity and we --</p> <p>9 HEARING OFFICER STROUP SCAFFIDI Well, that's not before</p> <p>10 me.</p> <p>11 MR. ROSENFELD: -- think they ended it.</p> <p>12 HEARING OFFICER STROUP SCAFFIDI That's not before me.</p> <p>13 MR. ROSENFELD: Excuse me. But the -- the point is that I</p> <p>14 don't -- you know, you accuse us of not doing something. I</p> <p>15 accuse them of terrorism. They're corporate terrorists. They</p> <p>16 took these workers and terminated them because they choose to</p> <p>17 want to be represented by a union. Either the Wynn did it or</p> <p>18 they did it or both of them did it. And I understand that's</p> <p>19 not before you. But now they raise an objection in saying, "we</p> <p>20 didn't employ them," and so I get to lay the record out as to</p> <p>21 who the employer was. And our -- from our point of view, it</p> <p>22 was the Wynn because the Wynn was the made -- was the one who</p> <p>23 made the decision, "Labor Plus, you terminate them because we</p> <p>24 don't have a union in our house."</p> <p>25 So, you know, for you to say that that contract is</p> | <p style="text-align: right;">Page 147</p> <p>1 that I don't think is completely relevant to this issue. I</p> <p>2 think it's more relevant --</p> <p>3 MR. ROSENFELD: We've been sparsely relevant.</p> <p>4 HEARING OFFICER STROUP SCAFFIDI -- to see -- excuse me.</p> <p>5 It's more relevant to see the termination notice.</p> <p>6 So, with that, we'll take a break at some point later so</p> <p>7 that you can get the termination notice.</p> <p>8 MR. G. SMITH: Thank you, Your Honor.</p> <p>9 HEARING OFFICER STROUP SCAFFIDI Okay? Do you have any</p> <p>10 additional questions for this witness?</p> <p>11 MR. G. SMITH: No.</p> <p>12 HEARING OFFICER STROUP SCAFFIDI Mr. Rosenfeld?</p> <p>13 RECROSS-EXAMINATION</p> <p>14 Q BY MR. ROSENFELD: If you'll look at Employer,</p> <p>15 Madam Terrorist --</p> <p>16 HEARING OFFICER STROUP SCAFFIDI Please behave yourself.</p> <p>17 MR. ROSENFELD: I am behaving myself.</p> <p>18 HEARING OFFICER STROUP SCAFFIDI Well, call her by her</p> <p>19 name, please.</p> <p>20 Q BY MR. ROSENFELD: Madam Terrorist --</p> <p>21 HEARING OFFICER STROUP SCAFFIDI You've been cautioned.</p> <p>22 MR. ROSENFELD: So what happens if I am -- what should I</p> <p>23 call her instead of that?</p> <p>24 HEARING OFFICER STROUP SCAFFIDI You've been -- you've been</p> <p>25 practicing for a long enough to know how to behave yourself at</p> |
| <p style="text-align: right;">Page 146</p> <p>1 irrelevant seems to me to make a judgment base and not even</p> <p>2 seeing the contract.</p> <p>3 HEARING OFFICER STROUP SCAFFIDI You can --</p> <p>4 MR. G. SMITH: That's ridiculous.</p> <p>5 HEARING OFFICER STROUP SCAFFIDI -- certainly file a</p> <p>6 special appeal, but I --</p> <p>7 MR. ROSENFELD: I'm not going to --</p> <p>8 HEARING OFFICER STROUP SCAFFIDI -- have decided --</p> <p>9 MR. ROSENFELD: -- waste my time. I'm just -- I'm --</p> <p>10 HEARING OFFICER STROUP SCAFFIDI Well, so, for the record,</p> <p>11 you can file a special appeal, if you'd like, but it's my</p> <p>12 decision that --</p> <p>13 MR. ROSENFELD: I --</p> <p>14 HEARING OFFICER STROUP SCAFFIDI -- it's not --</p> <p>15 MR. ROSENFELD: You know, if the record --</p> <p>16 HEARING OFFICER STROUP SCAFFIDI -- it's not completely --</p> <p>17 let me finish.</p> <p>18 MR. ROSENFELD: For the record, you're afraid --</p> <p>19 HEARING OFFICER STROUP SCAFFIDI Let --</p> <p>20 MR. ROSENFELD: -- of this. You're just --</p> <p>21 HEARING OFFICER STROUP SCAFFIDI Let me finish?</p> <p>22 MR. ROSENFELD: -- unwilling to do this.</p> <p>23 HEARING OFFICER STROUP SCAFFIDI Let me finish. It is</p> <p>24 still my hearing. It's not completely relevant. I'm not</p> <p>25 interested in delaying the hearing in order to get an agreement</p> | <p style="text-align: right;">Page 148</p> <p>1 an R case hearing.</p> <p>2 Q BY MR. ROSENFELD: So if you'll look at Employer</p> <p>3 Exhibit 25 from May 2 for Mr. Contini, he apparently signed in</p> <p>4 and the -- and the sign in is redacted or whited out, correct?</p> <p>5 A It appears so.</p> <p>6 Q Okay. But he did work that show, did he not, as far as</p> <p>7 you know?</p> <p>8 A I cannot verify that.</p> <p>9 Q You don't know, do you?</p> <p>10 A He did not work that show for Labor Plus.</p> <p>11 Q That wasn't my question. Do you know if he worked the</p> <p>12 show?</p> <p>13 A I can't answer that.</p> <p>14 Q You have no idea?</p> <p>15 A No, because he was no longer a Labor Plus employee.</p> <p>16 MR. ROSENFELD: Okay. I move to strike the because. That</p> <p>17 wasn't relevant and it wasn't responsive to the question.</p> <p>18 HEARING OFFICER STROUP SCAFFIDI I think she actually did</p> <p>19 respond to the question. You're asking her if he worked. She</p> <p>20 doesn't know. She answered.</p> <p>21 Q BY MR. ROSENFELD: You don't know if he worked the show?</p> <p>22 A I have no idea.</p> <p>23 Q Well, you testified earlier that you thought these folks</p> <p>24 are were working for the Wynn on that day.</p> <p>25 A Based on an e-mail that we received --</p> |

1 Q So that --
 2 A -- he was a Wynn employee. Did he work that show? I was
 3 not there that evening. I cannot answer whether he worked that
 4 show or not.
 5 Q But he wasn't -- he wasn't --
 6 A I can only verify that I received an e-mail stating he was
 7 hired by the Wynn for that --
 8 Q Okay. And where --
 9 A -- date.
 10 Q Where is this e-mail that you received?
 11 A I --
 12 Q Do you have that e-mail someplace?
 13 A It's in the court documents that you got from the lawyer
 14 stating that as of this date, these employees were no longer --
 15 Q No.
 16 A -- at Labor Plus.
 17 Q Where is the e-mail that you got from --
 18 A I do not have it.
 19 Q Where is it? Do you have it stored electronically
 20 someplace?
 21 A I would have to go look.
 22 Q You could do that from here of have somebody --
 23 A No.
 24 MR. ROSENFELD: Well, let's just come back tomorrow with
 25 them. I don't mind. Let's just waste another fucking day.

1 Excuse me. Waste another day. I'm just tired of this where
 2 they came in to hide-the-ball and to engage in this kind of
 3 obfuscation in what's a ridiculous case. And then they went
 4 produce the stuff that's relevant even though you ask them.
 5 HEARING OFFICER STROUP SCAFFIDI But you need to hold your
 6 temper, first of all. Second of all, I mean these are the
 7 Employer's objections.
 8 So I'm -- again, I'm a little taken aback that you wouldn't
 9 have the document that shows when they were -- when they
 10 stopped being your employee and started being Wynn's employee
 11 at the theater. So do you have -- does that -- are you able to
 12 get that document?
 13 MR. G. SMITH: I don't know. I didn't ask about that.
 14 HEARING OFFICER STROUP SCAFFIDI Okay. So when you take
 15 the break to get the termination notice, I'd suggest, you know,
 16 that you explore rather you can reduce, you know, that e-mail.
 17 MR. ROSENFELD: Well, let me just finish with a couple of
 18 questions.
 19 RECROSS-EXAMINATION (CONTINUED)
 20 Q BY MR. ROSENFELD: None of these -- all these people
 21 remained employees of Labor Plus on May 2 or thereafter,
 22 correct?
 23 A Correct.
 24 MR. ROSENFELD: Okay. I have nothing further subject to
 25 seeing these documents.

1 HEARING OFFICER STROUP SCAFFIDI Do you have any questions?
 2 MR. L. SMITH: Yes, Madam Hearing Officer.
 3 RECROSS-EXAMINATION
 4 Q BY MR. L. SMITH: You had mentioned -- there was a
 5 mentioned about this ShowStoppers show. And I know it's been
 6 mentioned but I don't know if it's been asked directly, this
 7 was a show that's only been at the Wynn; is that correct?
 8 A Correct.
 9 Q And it was actually created by the Wynn; is that right?
 10 A That is my understanding, yes.
 11 Q And this was recently, within the past year or so; is that
 12 right?
 13 A Correct.
 14 Q And you're not aware of the ShowStoppers show being
 15 performed at any other location; is that right?
 16 A Not to my knowledge.
 17 Q Now, the employees that were employees of Labor Plus
 18 working at ShowStoppers, these were not seasonal employees? In
 19 other words, they weren't going to be off for the summer or
 20 winter or anything like that; is that correct?
 21 A Not to my knowledge.
 22 Q So as far as Labor Plus was concerned, these employees
 23 were going to continue to work for any date that there was
 24 going to be a ShowStoppers show at the Wynn; is that correct?
 25 A Correct.

1 Q So -- and I guess that was the labor -- is it fair to say
 2 that Labor Plus planned on employing these employees at
 3 ShowStoppers so long as it had a contract with the Wynn?
 4 A Correct.
 5 Q So as of a April 15th -- I believe you said that Wynn had
 6 terminated as of April 17th?
 7 A Correct.
 8 Q But let's go back a couple of days. April 15th. As of
 9 April 15th, Labor Plus planned on working these employees at
 10 the ShowStoppers' show at the Wynn indefinitely; isn't that
 11 correct?
 12 A Correct.
 13 Q So as of April 15th, Labor Plus itself, or you as Labor
 14 Plus' office manager, had no expectation that the show -- that
 15 your contract with the Wynn was going to end; is that correct?
 16 A On that day, no.
 17 Q Okay. And April 15th was the day that the Union filed the
 18 petition; is that correct?
 19 A Correct.
 20 Q Two days later is when the Wynn provided their notice that
 21 they were no longer going to have a contract with Labor Plus,
 22 correct?
 23 A Correct.
 24 Q So prior to April 17th, Labor Plus, or you as -- as Labor
 25 Plus' office manager, expected that the contract was going to

1 continue indefinitely, correct?
 2 A Correct.
 3 Q Now, when Labor Plus let these employees go, they never
 4 told the employees that, "You're fired. Go back to the union
 5 hall." Is that correct?
 6 A Absolutely not.
 7 Q They never told the employees that, "You're fired and you
 8 will never be able to work for Labor Plus." Is that correct?
 9 A Correct.
 10 Q They were never told that if -- well, first off, there's
 11 nothing that you're aware of in the contract, that we don't
 12 have in front of us, there's nothing that you're aware of in
 13 the contract that says that Labor Plus couldn't employ these
 14 employees again at ShowStoppers, correct? So there's nothing
 15 in the contract that you know of preventing these employees for
 16 working for Labor Plus again, correct?
 17 A Correct.
 18 Q Including even if Labor Plus was to employ them at
 19 ShowStoppers with a contract with the Wynn?
 20 A That would not happen. We no longer have an agreement
 21 with the Wynn, so we wouldn't be supplying people to them.
 22 Q But my question is, as far as the contract, as far as what
 23 you're aware of, there was nothing -- because we've got the
 24 sequence of events. The employees worked for Labor Plus --
 25 A Uh-huh.

1 Q Now, when you say --
 2 A There really -- I did not inform Michael Johnson that
 3 Corey did not know those employees.
 4 Q Okay. And when you were present for the pre-election
 5 conference, there was no mention about requesting employees' ID
 6 for voting; is that correct?
 7 A Correct.
 8 Q Now, just for clarification, you had mentioned -- I
 9 believe it was on direct examination -- an Apple Thorn from IA?
 10 A Correct. Her real name is --
 11 UNIDENTIFIED SPEAKER: Marielle. Marielle.
 12 THE WITNESS: Maria (sic). So --
 13 Q BY MR. L. SMITH: Now, when you say IA, what is that?
 14 A International Alliance of Theatrical Stage Employees.
 15 It's the IATSE, Local 720.
 16 Q You were involved in some of the pre-election discussions
 17 on behalf the Employer as -- before the election days or
 18 location were even set, you were involved in some of those
 19 discussions, weren't you?
 20 A With whom?
 21 Q As -- as far as trying to -- well, let me just ask you a
 22 more direct question. The Employer was asked to host the
 23 election at their facility, weren't they?
 24 A It was a request in the petition, yes.
 25 Q And the Employer denied that request, correct?

1 Q -- performing work at the ShowStoppers' show at the Wynn.
 2 And then eventually those employees, now they work for the Wynn
 3 doing work at the ShowStoppers, as has been testified to
 4 already. But there's nothing preventing that work and those
 5 employees from shifting back to Labor Plus if Labor Plus and
 6 Wynn agree to it? Nothing that you're aware of that --
 7 A No.
 8 Q -- prevented that, correct?
 9 A Not that I know of. I've heard rumors that some of the --
 10 Q Well, I don't want you to give any rumors. I'm just
 11 asking you if you --
 12 A Okay. To my knowledge, no, there was no reason.
 13 Q Okay. There were some questions about Corey earlier. And
 14 you were present when Corey testified earlier; is that correct?
 15 A Yes.
 16 Q Prior to the election, you were aware that Corey did not
 17 know of the Labor Plus employees that were going to be voting;
 18 is that correct?
 19 A Correct.
 20 Q And I don't have this in my notes. I don't believe that I
 21 asked this already. But you didn't inform anyone prior to the
 22 election that Corey did not know any of these employees -- you
 23 didn't inform anybody at the election site that Corey didn't
 24 know any of the employees; is that correct?
 25 A No.

1 A To my knowledge, no.
 2 Q Okay. So I mean you're not aware of any time where the
 3 Employer agreed to hold the election somewhere else other than
 4 in front of the Foley building; is that correct?
 5 A It was my understanding that's where we were appointed
 6 to --
 7 Q But you don't -- you're got aware of the Employer offering
 8 any other location, are you?
 9 A No, I am not. I'm also not aware of -- that that was ever
 10 an option.
 11 MR. L. SMITH: And just so that the record is clear, I
 12 think we can probably get a stipulation that when I say the
 13 Foley Federal Building, we're talking about the building where
 14 the election was -- was held.
 15 MR. G. SMITH: I would stipulate to that. In front of --
 16 we're in that building --
 17 HEARING OFFICER STROUP SCAFFIDI Mr. Rosenfeld?
 18 MR. G. SMITH: -- right now.
 19 MR. L. SMITH: Yes.
 20 MR. ROSENFELD: That's it. Yes.
 21 HEARING OFFICER STROUP SCAFFIDI Okay. The stipulation is
 22 received.
 23 Q BY MR. L. SMITH: Were you aware -- or you knew that there
 24 was discussion or at least some back and forth about the
 25 election location being here at the Foley building about

1 concerns about there being a parade on the same day, correct?
 2 A No, it was not a parade. Apparently -- and, again, I'm
 3 only getting this hearsay. I did not get this --
 4 MR. ROSENFELD: And I object --
 5 THE WITNESS: -- direct.
 6 MR. ROSENFELD: I object to her testimony at this hearsay.
 7 HEARING OFFICER STROUP SCAFFIDI Well --
 8 THE WITNESS: That the federal --
 9 MR. ROSENFELD: Object on the grounds it's hearsay. She
 10 doesn't have any personal knowledge.
 11 MR. L. SMITH: To the extent that I can rephrase the
 12 question --
 13 HEARING OFFICER STROUP SCAFFIDI Okay.
 14 MR. L. SMITH: -- I think I will --
 15 HEARING OFFICER STROUP SCAFFIDI Thank you.
 16 Q BY MR. L. SMITH: So instead of specifically what was
 17 said, you were aware at least a couple of days before the
 18 election that there was going to be this Race for the Cure,
 19 correct?
 20 A No. We knew a few days in advance that there was concern
 21 about having it here at the building because of events
 22 involving around boxing.
 23 Q Okay. So there were concerns about events going on in the
 24 general area, correct?
 25 A Correct.

1 terminated the agreement?
 2 A No.
 3 Q No one suggested -- no one at all has suggested to you any
 4 reason why they terminated the agreement?
 5 A I don't know why they did. I don't know what they think
 6 or how they think. I cannot answer that question. I don't
 7 know.
 8 Q Well, did anyone from Labor Plus ask Wynn what the reason
 9 was for that termination?
 10 A No.
 11 Q Okay. Labor Plus --
 12 A Not to my knowledge.
 13 Q -- didn't? Are you telling us that Labor Plus made no
 14 effort to learn why they lost an account?
 15 A No.
 16 Q Are you telling us Labor Plus didn't care?
 17 A It has nothing to do with care.
 18 Q It didn't?
 19 A That was a Wynn decision made. And we would still like to
 20 have them as a client in the future for other ventures. So we
 21 would not question a decision they made --
 22 Q Well, you --
 23 A -- that could jeopardize future business.
 24 Q You didn't ask them if you'd done something wrong or they
 25 were dissatisfied with your service or anything?

1 Q And part of that being because this is being held on
 2 Las Vegas Boulevard, correct?
 3 A Correct.
 4 Q And at no time from that point until the election, you're
 5 not aware of the Employer ever offering an alternate election
 6 location; is that correct?
 7 A Correct.
 8 Q Okay.
 9 A It is my understanding that --
 10 Q I -- hold on. I didn't ask you a question.
 11 A Sorry.
 12 MR. L. SMITH: I have no further questions.
 13 HEARING OFFICER STROUP SCAFFIDI Okay. Do you have any
 14 redirect?
 15 MR. G. SMITH: No.
 16 HEARING OFFICER STROUP SCAFFIDI Mr. Rosenfeld, do you have
 17 any --
 18 FURTHER RECROSS-EXAMINATION
 19 Q BY MR. ROSENFELD: Do you know why the Wynn terminated the
 20 agreement or gave you notice of impending termination two days
 21 after the election petition was filed?
 22 A I cannot answer that. I don't know --
 23 Q Did you hear from --
 24 A -- what caused it.
 25 Q Did you have from -- hear from any source why the Wynn

1 A No.
 2 Q Do you know if anybody at Labor Plus let Wynn know that
 3 the election petition had been filed?
 4 A No, nobody from Labor Plus notified the Wynn of the
 5 election petition. No.
 6 Q You didn't know them, correct? .
 7 A No, I did not.
 8 Q Okay. Do you know if any of the stagehands let the Wynn
 9 folks know that that had happened?
 10 A That I cannot answer.
 11 Q Okay. Have you been paid all that you're owed by the
 12 Wynn?
 13 A Yes.
 14 Q Okay. How much an -- how much -- what -- how much an hour
 15 were you charging for the stagehands?
 16 MR. G. SMITH: Objection.
 17 HEARING OFFICER STROUP SCAFFIDI Yeah. What's the
 18 relevance?
 19 MR. ROSENFELD: Of the amount?
 20 HEARING OFFICER STROUP SCAFFIDI Yes.
 21 MR. ROSENFELD: Because it relates to who the Employer is.
 22 HEARING OFFICER STROUP SCAFFIDI Again, we're not getting
 23 into this joint employer issue.
 24 MR. ROSENFELD: What about the successor issue? If the
 25 Wynn is --

| | |
|---|---|
| <p style="text-align: right;">Page 161</p> <p>1 HEARING OFFICER STROUP SCAFFIDI It's not before me.</p> <p>2 MR. ROSENFELD: Well, then wait a minute. Let's just go</p> <p>3 back to something. I didn't file the objections. They did.</p> <p>4 I'm entitled to defeat the objections based upon any argument I</p> <p>5 can make. I don't have to disclose them beforehand. I don't</p> <p>6 know to tell you, I don't have to tell Smith, I don't have to</p> <p>7 -- Mister -- I don't have to tell Greg Smith, I don't have to</p> <p>8 tell Tony Smith, I don't have to tell Cornele Overstreet, I</p> <p>9 don't have to tell the Acting Regional Director of your region.</p> <p>10 I don't have to say a word.</p> <p>11 The -- the report on objections can't foreclose the Union</p> <p>12 from raising any legitimate reason. And the fact is, if</p> <p>13 there's a joint employer relationship, I'm entitled to raise</p> <p>14 it. We're in the -- we're -- you know, the Regional Director</p> <p>15 didn't issue a report saying -- foreclosing the Union from</p> <p>16 raising any legitimate issue that the employment -- again, from</p> <p>17 our point of view, the issue is who was made on May 2, the day</p> <p>18 of the election.</p> <p>19 The witnesses conceded that all of these workers were</p> <p>20 employed by the Company as of that date.</p> <p>21 HEARING OFFICER STROUP SCAFFIDI I don't think the witness</p> <p>22 has conceded that, but okay.</p> <p>23 MR. ROSENFELD: She has. She said, "We didn't terminate</p> <p>24 any of them." Some on that day were paid by the Wynn, at</p> <p>25 least, according to her, four or five of them were on May 2.</p> | <p style="text-align: right;">Page 163</p> <p>1 ending date. But I assume it's --</p> <p>2 MR. ROSENFELD: It's --</p> <p>3 HEARING OFFICER STROUP SCAFFIDI -- presumed that they were</p> <p>4 employed on that date.</p> <p>5 MR. ROSENFELD: Well, I think it's clear that they were,</p> <p>6 because we have a voter eligibility list --</p> <p>7 HEARING OFFICER STROUP SCAFFIDI Right. So --</p> <p>8 MR. ROSENFELD: -- and -- and -- you know, since this is</p> <p>9 all a --</p> <p>10 HEARING OFFICER STROUP SCAFFIDI Can I finish?</p> <p>11 MR. ROSENFELD: It's my hearing, but go ahead.</p> <p>12 HEARING OFFICER STROUP SCAFFIDI Thank you.</p> <p>13 So -- and so because I don't think it's the reasonable</p> <p>14 expectation of continued employment, to a large extent, your</p> <p>15 argument about joint employer status is irrelevant, any</p> <p>16 material to this --</p> <p>17 MR. ROSENFELD: Well --</p> <p>18 HEARING OFFICER STROUP SCAFFIDI -- proceeding.</p> <p>19 MR. ROSENFELD: You're right, but it was irrelevant --</p> <p>20 HEARING OFFICER STROUP SCAFFIDI Moreover --</p> <p>21 MR. ROSENFELD: -- to the five people employed on May 2.</p> <p>22 They were jointly employed.</p> <p>23 HEARING OFFICER STROUP SCAFFIDI Moreover, I am only</p> <p>24 authorized to decide the issues presented by the objections and</p> <p>25 the challenged ballots. There's nothing in here that</p> |
| <p style="text-align: right;">Page 162</p> <p>1 But she concedes they all worked after that date.</p> <p>2 So I don't know what -- it doesn't seem to me all this</p> <p>3 evidence is relevant in the standard is who was employed on</p> <p>4 May 2, the date of election, Saturday, the day the election was</p> <p>5 conducted outside this building. So we spent four or five</p> <p>6 hours fighting about it, in part, because I'm trying to make a</p> <p>7 record that there's also other reasons to find that they were</p> <p>8 eligible voters.</p> <p>9 But I've made my point and I'll make it again I'm sure</p> <p>10 before I'm done today.</p> <p>11 HEARING OFFICER STROUP SCAFFIDI I agree that the test that</p> <p>12 should be applied is whether the employees were employed on the</p> <p>13 payroll ending date and on the date of the election. Unless</p> <p>14 the Employer can produce a case that says otherwise, that's the</p> <p>15 test that I'm planning on using. The cases that I'm familiar</p> <p>16 with that deal with reasonable expectation of continued</p> <p>17 employment are where you have a layoff or a strike or we're</p> <p>18 dealing with a temporary employee.</p> <p>19 So my point is that, to some extent, I agree that the test</p> <p>20 that I think is applicable here is whether they were employed</p> <p>21 on the payroll ending date and on the date of the election.</p> <p>22 Which is why I've been pressing so hard for evidence that</p> <p>23 demonstrates whether, in fact, they were employed on that</p> <p>24 date -- or those two dates.</p> <p>25 There hasn't been any testimony with respect to the payroll</p> | <p style="text-align: right;">Page 164</p> <p>1 explicitly deal with this joint employer issue. The parties</p> <p>2 signed a stipulated election agreement for Labor Plus</p> <p>3 employees. There's no indication from the stipulated election</p> <p>4 agreement that there was any intention, any discussion about</p> <p>5 jointly employed employees.</p> <p>6 Finally, Wynn is not a party to this proceeding. So to be</p> <p>7 going into this line of questioning where they're not even here</p> <p>8 to present evidence about matters which would have a direct</p> <p>9 impact on them is -- is inappropriate.</p> <p>10 So, again, I am not going to allow testimony with respect</p> <p>11 to joint employer status. It's not before me. My</p> <p>12 recommendation will not reach it. What implications, you know,</p> <p>13 the -- the state of employees working for the Employer will</p> <p>14 have any bargaining obligation will be decided in a another</p> <p>15 proceeding. But it's just not before me today. My issue --</p> <p>16 the only things that I need to decide are what's contained in</p> <p>17 the -- in the order.</p> <p>18 So, with that, let's continue. I believe you had a</p> <p>19 question outstanding, didn't you? That was the last --</p> <p>20 MR. L. SMITH: I don't believe so. But I was looking for</p> <p>21 the payroll ending date, which I believe should be in --</p> <p>22 HEARING OFFICER STROUP SCAFFIDI It should be in the --</p> <p>23 MR. L. SMITH: -- these stip agreements.</p> <p>24 HEARING OFFICER STROUP SCAFFIDI -- stipulated election</p> <p>25 agreement.</p> |

1 MR. L. SMITH: Which I think is in Employer Exhibit 2. So
2 I think -- also it's missing, I think that we have that
3 covered.

4 MR. ROSENFELD: I'll offer a stipulation that RD Exhibit 1,
5 which is the voter list, reflects the employees that were on
6 the -- who were on the voter list, and, therefore, employed as
7 of the payroll eligibility date. That solves that problem.

8 HEARING OFFICER STROUP SCAFFIDI Will the Employer
9 stipulate?

10 MR. G. SMITH: Let me hear it again.

11 MR. ROSENFELD: I proposed that the voter eligibility list,
12 which was Regional Director's Exhibit 1 -- which, by the way,
13 is also the same document that was used by the two observers --
14 reflects those employees who were employed in the unit as of
15 the payroll eligibility date.

16 MR. L. SMITH: I believe I was wrong on the exhibit number.

17 HEARING OFFICER STROUP SCAFFIDI Yeah. It's not that one.

18 MR. L. SMITH: I believe it's 10.

19 HEARING OFFICER STROUP SCAFFIDI 10?

20 MR. L. SMITH: I believe so, Madam Hearing Officer.

21 MR. G. SMITH: This is a General Counsel's exhibit you're
22 talking about?

23 MR. L. SMITH: No. This is an Employer exhibit --

24 MR. G. SMITH: Oh.

25 MR. L. SMITH: -- during the payroll ending April 18, 2015.

1 So I just want to illustrate that although we can spend
2 all -- a good part of the day arguing about it --

3 HEARING OFFICER STROUP SCAFFIDI Well, but that's not --
4 that's not the whole case though, right?

5 MR. ROSENFELD: Well, but for --

6 HEARING OFFICER STROUP SCAFFIDI I mean it certainly deals
7 with the --

8 MR. ROSENFELD: -- for that purpose it is.

9 HEARING OFFICER STROUP SCAFFIDI Right.

10 MR. ROSENFELD: Okay? And I -- I agree that that would be
11 an easy way out, but I never give hearing officers easy way
12 outs. That's not my charm. It's just the way I am.

13 HEARING OFFICER STROUP SCAFFIDI I mean that very well
14 could be the outcome. But, as I said, I mean that's not --
15 that doesn't deal with objections three through ten, so --

16 MR. ROSENFELD: Well, I'm suggesting it, because we'd like
17 to quick decision. So you can just issue on all decisions, and
18 you find that right now, and then we are done with it.

19 HEARING OFFICER STROUP SCAFFIDI Yeah. I'm not going to do
20 that.

21 MR. ROSENFELD: Okay. I -- I don't have anything further
22 on this issue until we receive the --

23 HEARING OFFICER STROUP SCAFFIDI Okay.

24 MR. ROSENFELD: -- order.

25 HEARING OFFICER STROUP SCAFFIDI Does anyone have any

1 MR. ROSENFELD: It's both -- it's both Regional Director's
2 Exhibit 1 and Employer's Exhibit 11. They're the same
3 documents. The voter list. We used to call it the excelsior
4 list. We don't do that anymore. That's a nasty word.

5 I'll propose that is the list of employees who were in the
6 unit as of the payroll eligibility date, as supplied by the
7 Employer. We all agree they were employees as of that date in
8 the unit.

9 MR. G. SMITH: I agree.

10 HEARING OFFICER STROUP SCAFFIDI You stipulate?

11 MR. ROSENFELD: Okay.

12 HEARING OFFICER STROUP SCAFFIDI Okay. So the stipulation
13 is received.

14 MR. ROSENFELD: So, Madam Hearing Officer, in some sense
15 this is a tempest in a teapot because you've not four or five
16 people who the Employer claims were no longer employed by -- or
17 excuse me -- who were no longer working the show for Labor
18 Plus, they were being paid by Wynn on the 2nd.

19 HEARING OFFICER STROUP SCAFFIDI Uh-huh.

20 MR. ROSENFELD: So, arguably, we could see a regional -- a
21 decision that says everybody else who voted was eligible, and
22 then you can put those five aside. It may not be
23 determinative. If it is determinative, then we might have to
24 come back and finish the rest of this case as the joint
25 employer issue.

1 additional questions Ms. Taratko?

2 THE WITNESS: Thank you.

3 MR. ROSENFELD: We all learned Taratko, right? Did I do it
4 right?

5 THE WITNESS: Taratko. You did. You did it beautifully.
6 Thank you.

7 MR. ROSENFELD: Thank you. That's the nicest thing anyone
8 said about me today.

9 MR. L. SMITH: I have no further questions.

10 HEARING OFFICER STROUP SCAFFIDI So let me just ask a
11 couple of things.

12 Is the Employer doing any other work at that theater? Is
13 the Employer providing --

14 THE WITNESS: At the theater?

15 HEARING OFFICER STROUP SCAFFIDI -- any other employees to
16 work at that theater --

17 THE WITNESS: No.

18 HEARING OFFICER STROUP SCAFFIDI -- in any other
19 classification?

20 THE WITNESS: No.

21 HEARING OFFICER STROUP SCAFFIDI Do you know why the
22 Employer entered into the stipulated election agreement given
23 that the Employer apparently intended to argue that work was
24 going to cease imminently?

25 MR. ROSENFELD: And you know I'm going to object for two

1 reasons. One, I'm going to help Mr. Smith, that might be a
 2 privileged answer because it was done by the lawyer.
 3 HEARING OFFICER STROUP SCAFFIDI You did not sign the
 4 stipulated election agreement?
 5 THE WITNESS: No.
 6 HEARING OFFICER STROUP SCAFFIDI Okay.
 7 MR. ROSENFELD: And, number two, I would object because
 8 it's hearsay. Because I know why she entered into it. She
 9 was? New York and couldn't get out here.
 10 But they made the -- they entered into it. It's certainly
 11 irrelevant. They entered into it.
 12 MR. G. SMITH: Well --
 13 HEARING OFFICER STROUP SCAFFIDI Did -- did you or anyone
 14 else object at the pre-election conference to a polling
 15 location?
 16 THE WITNESS: We objected prior to their -- the attorney --
 17 HEARING OFFICER STROUP SCAFFIDI Uh-huh.
 18 MR. ROSENFELD: Now, wait, wait, wait. I move to strike
 19 that. That wasn't responsive and it's hearsay. She doesn't
 20 know there was an objection. She can't testify about that.
 21 She can only -- your question, Madam Hearing Officer, was at
 22 the time pre-election conference.
 23 HEARING OFFICER STROUP SCAFFIDI At the pre-election
 24 conference, my question is whether there was any objection at
 25 that time by you or the Union representatives --

1 a show run. With a specifically is a show run?
 2 THE WITNESS: A show run is for the duration of the show.
 3 HEARING OFFICER STROUP SCAFFIDI The duration of the show.
 4 Okay. I assumed that, but I wanted to clarify. Okay.
 5 If there are no other questions, you can be excused.
 6 Any other questions?
 7 MR. G. SMITH: No.
 8 MR. L. SMITH: No questions.
 9 HEARING OFFICER STROUP SCAFFIDI Okay. You can be excused.
 10 MR. ROSENFELD: Thank you.
 11 HEARING OFFICER STROUP SCAFFIDI Do you have any other
 12 witnesses?
 13 MR. G. SMITH: No.
 14 HEARING OFFICER STROUP SCAFFIDI Okay. Mr. Rosenfeld, do
 15 you want to proceed with your case?
 16 MR. ROSENFELD: Give me a couple of minutes and then we'll
 17 make a decision what to do here.
 18 HEARING OFFICER STROUP SCAFFIDI Okay.
 19 MR. ROSENFELD: Well, we're still waiting for some document
 20 though, right?
 21 HEARING OFFICER STROUP SCAFFIDI We are. We are.
 22 Is this a good time then for you to see if you can get
 23 those documents?
 24 MR. G. SMITH: Sure.
 25 MR. ROSENFELD: Why don't we take five --

1 THE WITNESS: No.
 2 HEARING OFFICER STROUP SCAFFIDI -- about the location of
 3 the polling site?
 4 THE WITNESS: No.
 5 MR. G. SMITH: There's a document that addresses that, Your
 6 Honor, in the -- in the exhibits.
 7 MR. ROSENFELD: I hope I haven't offended you by not
 8 calling you Your Honor, Madam Hearing Officer.
 9 HEARING OFFICER STROUP SCAFFIDI No, you haven't.
 10 MR. ROSENFELD: "Shew."
 11 MR. G. SMITH: There's plenty of other reasons you've
 12 offended her.
 13 MR. ROSENFELD: Pardon?
 14 MR. G. SMITH: There's plenty of other reasons.
 15 MR. ROSENFELD: There may be other reasons, but I just
 16 didn't want that to be the reason.
 17 I want the record to note that Mr. Smith smiled. Both --
 18 both of them, actually.
 19 HEARING OFFICER STROUP SCAFFIDI And was there any
 20 discussion during the pre-election conference about a no
 21 electioneering area?
 22 THE WITNESS: No.
 23 HEARING OFFICER STROUP SCAFFIDI Okay. Oh, and just one
 24 thing, because it's not -- it's not clear to me, but several
 25 people -- well, not several, but you and Corey testified about

1 HEARING OFFICER STROUP SCAFFIDI Okay. Let's go off --
 2 MR. ROSENFELD: -- ten minutes and see if we can do that
 3 and then --
 4 HEARING OFFICER STROUP SCAFFIDI Let's go off the record.
 5 (Off the record at 3:26 p.m.)
 6 HEARING OFFICER STROUP SCAFFIDI Okay. Mr. Rosenfeld, do
 7 you have any witnesses to call?
 8 MR. ROSENFELD: No, other than to offer some exhibits.
 9 HEARING OFFICER STROUP SCAFFIDI Do you want to do that
 10 now?
 11 MR. ROSENFELD: Sure.
 12 HEARING OFFICER STROUP SCAFFIDI By the way, the Employer
 13 has not offered any of its exhibits.
 14 MR. ROSENFELD: I was just going to do that. You took --
 15 you stole that --
 16 HEARING OFFICER STROUP SCAFFIDI Oh, sorry.
 17 MR. ROSENFELD: This isn't fair. He -- he rested his case,
 18 sort of.
 19 MR. G. SMITH: I didn't rest --
 20 MR. ROSENFELD: So I'm going to offer --
 21 MR. G. SMITH: I haven't rested my case.
 22 MR. ROSENFELD: Hold on a minute.
 23 HEARING OFFICER STROUP SCAFFIDI Did you have occasional
 24 witnesses you were going to call?
 25 MR. G. SMITH: No.

1 HEARING OFFICER STROUP SCAFFIDI Okay.
 2 MR. G. SMITH: But I think my case is open though.
 3 MR. ROSENFELD: Oh, all right. Well, now I'm -- now I'm
 4 not going to rest. He's got more witnesses.
 5 MR. G. SMITH: No. I just mentioned of my exhibits. I
 6 through 26 I believe it is. Yeah. I through 26.
 7 HEARING OFFICER STROUP SCAFFIDI Okay. Any objection?
 8 MR. ROSENFELD: Yes.
 9 HEARING OFFICER STROUP SCAFFIDI To which one?
 10 MR. G. SMITH: Well, he -- he's already voiced all the
 11 exception -- objections he had. They went through every one of
 12 them this morning.
 13 MR. ROSENFELD: I just want to be clear on the record. As
 14 to Employer Exhibit 1, the photos, and other photos, they are -
 15 - they've not been authenticated. They relate to payroll
 16 records. And I object since there's no foundation.
 17 HEARING OFFICER STROUP SCAFFIDI Okay. And this is --
 18 MR. ROSENFELD: Employer Exhibit --
 19 HEARING OFFICER STROUP SCAFFIDI Just hold on for a second.
 20 Let's go through individually. It's just easier I think for
 21 the record.
 22 Do you have any objection to Employer 1?
 23 MR. L. SMITH: The -- no objection to that. The only
 24 objections I would have are, as Mr. Rosenfeld, there might be
 25 some statements both -- whether it's the Union's statement for

1 MR. G. SMITH: That's what said this morning. I agree.
 2 HEARING OFFICER STROUP SCAFFIDI Okay.
 3 MR. ROSENFELD: And --
 4 HEARING OFFICER STROUP SCAFFIDI Now, with respect to 2
 5 through 26?
 6 MR. ROSENFELD: Yeah. I'm --
 7 MR. G. SMITH: I really --
 8 MR. ROSENFELD: -- I'm object --
 9 MR. G. SMITH: I really object to him going through it
 10 again. He -- he laid it out this morning. He said, "I object
 11 on the basis of hearsay for this part, you can accept this one
 12 completely." I mean he's done all that.
 13 HEARING OFFICER STROUP SCAFFIDI I mean in order to save
 14 time, is it really necessary for you to go through --
 15 MR. ROSENFELD: Well, you know me --
 16 HEARING OFFICER STROUP SCAFFIDI -- them?
 17 MR. ROSENFELD: -- I always have to say things twice.
 18 MR. L. SMITH: If I can jump in just for -- just a second.
 19 I don't mean to -- to stop what you were going to say. But if
 20 I can -- because there is no objections that I'm going to have
 21 for the exhibits, while the discussion is still going on, if I
 22 can step out for just a moment?
 23 HEARING OFFICER STROUP SCAFFIDI Absolutely.
 24 MR. L. SMITH: I'm not asking for anything to stop.
 25 HEARING OFFICER STROUP SCAFFIDI Sure.

1 the Employer's statement, that may be hearsay. But I think
 2 that really goes to the weights that the Hearing Officer
 3 gives --
 4 HEARING OFFICER STROUP SCAFFIDI Agreed.
 5 MR. L. SMITH: -- to the documents. Other than that, I
 6 have no objections to the admissibility of any of the documents
 7 that have been presented so far.
 8 HEARING OFFICER STROUP SCAFFIDI Okay.
 9 MR. ROSENFELD: But the document -- Employer Exhibit 1
 10 apparently, according to Mr. Smith, relates to whether a
 11 particular employee is eligible. He was on the eligibility
 12 list. And if he wasn't, it makes no difference because the
 13 hearing -- the notice of the hearing -- I better be -- the
 14 notice of hearing did not notice for hearing that issue. And
 15 this pushes eligibility.
 16 HEARING OFFICER STROUP SCAFFIDI Correct. So I said
 17 earlier that I agree that this document is not relevant. The
 18 challenged ballot for Chris Portzer, as I understand it, is
 19 simply whether he had a reasonable expectation of continued
 20 employment and not whether he was eligible -- or ineligible for
 21 not working a sufficient number of hours.
 22 So --
 23 MR. G. SMITH: I do agree.
 24 HEARING OFFICER STROUP SCAFFIDI -- I'm going to reject
 25 Employer 1, but I will put it in the rejected exhibit file.

1 MR. L. SMITH: But I will be right back.
 2 HEARING OFFICER STROUP SCAFFIDI Okay.
 3 MR. L. SMITH: Thank you.
 4 MR. ROSENFELD: No. I -- I stated my position earlier.
 5 HEARING OFFICER STROUP SCAFFIDI Okay.
 6 MR. ROSENFELD: I'm not going to change our position.
 7 HEARING OFFICER STROUP SCAFFIDI Okay.
 8 MR. ROSENFELD: But I want to be clear that the letters
 9 that Ms. LaRocca wrote are hearsay. So you can't admit them
 10 and then take those statements for the truth of the matter or
 11 what's in her letters. I mean she's making -- for example, the
 12 position statement is an out-of-court hearsay statement.
 13 HEARING OFFICER STROUP SCAFFIDI Right.
 14 MR. ROSENFELD: It's of no weight in this kind of a
 15 hearing. You can't take it and give it to what weight you want
 16 to because it's plain hearsay. If they want to prove those
 17 facts, they have to have witnesses. They can't do it based on
 18 her letters. So I want to be very clear I'm making a vigorous
 19 point that any of the letters that are hers, I'm not objecting
 20 on a foundational ground that the letter was sent or received,
 21 nonetheless it's still hearsay.
 22 HEARING OFFICER STROUP SCAFFIDI In order.
 23 MR. ROSENFELD: It cannot be admitted for the truth of the
 24 matter.
 25 HEARING OFFICER STROUP SCAFFIDI Understood.

1 MR. ROSENFELD: And Mr. Smith has not argued it's relevant
2 for any other purpose. Because it's possible a letter will be
3 relevant other than just establish the truth of what's said in
4 the letter.
5 HEARING OFFICER STROUP SCAFFIDI Understood. So do you
6 object to their being --
7 MR. ROSENFELD: Yes.
8 HEARING OFFICER STROUP SCAFFIDI -- received in evidence?
9 MR. ROSENFELD: Absolutely. Though I -- okay. Just to be
10 clear, I'm not objecting to, for example, Board Exhibit 2.
11 HEARING OFFICER STROUP SCAFFIDI Right.
12 MR. ROSENFELD: I'm not objecting to Employer Exhibit 3.
13 I'm objecting to Employer 4, I'm objecting to Employer 5. I'm
14 not objecting to Employer -- I am not objecting -- I'm sorry.
15 I am not objecting to Employer Exhibit 6, because that's for
16 Michael Johnson. I'm not objecting to Employer Exhibit 7, the
17 statement of position. I'm not objecting to Employer's 8.
18 It's a document from the Board. I am objecting to Employer 9.
19 MR. G. SMITH: But only on the basis of hearsay, not on
20 authentication, right?
21 MR. ROSENFELD: No. I've agreed that they were letters
22 sent. I'm not -- for example, I made it clear that I'm not
23 asking that someone testify that Employer Exhibit 9 was a
24 document that Ms. LaRocca sent to Mr. Johnson. I agreed that
25 was a letter, but I'm objecting on other grounds.

1 around more I suppose -- or I never mess around. But I could
2 have messed around by saying I object and make Ms. LaRocca come
3 out here and testify. I didn't do that. But the letter itself
4 is irrelevant because everything that she says in there,
5 whether -- is not coming in for any purpose. So the letter
6 should not come in.
7 HEARING OFFICER STROUP SCAFFIDI All right. Let's -- so
8 you're on Employer 10. You're not objecting to Employer 10?
9 MR. ROSENFELD: No.
10 HEARING OFFICER STROUP SCAFFIDI Okay.
11 MR. ROSENFELD: I'm not objecting to Employer 11, because
12 that was the voter list. I'm am objecting to Employer 12.
13 Again, it's all hearsay. It comes in for no purpose. Employer
14 13 I'm objecting to. Employer Exhibit 14 I'm not objecting to.
15 That's the revised notice of election. Employer 15's the Board
16 documents, the tally. It shows the Union won. I am not
17 objecting to Employer 15. Employer 16, I agree it can be part
18 of the formal papers, but what's ever -- whatever's in a
19 pleading isn't taken for the truth anyway. 40102 -- lawyer
20 sign it.
21 Employer 17 is a letter that the Union sent to Mr. Long,
22 and I don't object to that. Employer 18 is the letter from the
23 Region to counsel setting forth the challenged ballots issues.
24 I don't object to that. Employer 20 --
25 HEARING OFFICER STROUP SCAFFIDI 19.

1 HEARING OFFICER STROUP SCAFFIDI Right. But you're not
2 objecting to their being received in evidence is what --
3 MR. ROSENFELD: I am. I am objecting because there's no
4 relevance to the fact that a letter was sent unless it comes in
5 for some other purpose. All right. Maybe I didn't make that
6 clear.
7 You know, I'm not -- as a foundation matter, I understand a
8 letter was sent. I'm not objecting. But then there has to be
9 relevance to the document. If the document contains pure
10 hearsay and can't be used for any purpose, it's not relevant
11 for any purpose in this hearing and shouldn't come into
12 evidence. I mean if -- if Mr. Smith had some other argument,
13 like it's -- the letters come into evidence to establish that
14 somebody took a position before something else happened, that
15 could come in for --
16 MR. G. SMITH: Well, I can --
17 MR. ROSENFELD: -- termination --
18 MR. G. SMITH: I can argue --
19 MR. ROSENFELD: -- but --
20 MR. G. SMITH: -- that the -- that there were positions not
21 taken as well.
22 MR. ROSENFELD: But they're -- but that's all hearsay in
23 that letter.
24 MR. G. SMITH: No it's not.
25 MR. ROSENFELD: So it -- you know, I could have just messed

1 MR. ROSENFELD: 19. I misread.
2 HEARING OFFICER STROUP SCAFFIDI Are the pictures.
3 MR. ROSENFELD: The pictures. I don't object to the
4 pictures. They've been authenticated sufficiently.
5 HEARING OFFICER STROUP SCAFFIDI Okay.
6 MR. ROSENFELD: Employer 20 are the objections. Those are
7 part of the pleadings. They're -- again, they also don't come
8 in for the truth of the matter. They just come in for those
9 accusations or allegations made. Employer 21, I object to.
10 It's a letter. Particularly since it has some attachments that
11 were never authenticated. Employer Exhibit 22 is a letter that
12 Ms. LaRocca wrote to my office, Ms. Sencer. I don't object to
13 that since that's for the truth. They're violating the law.
14 Employer Exhibit 23 is an e-mail that Ms. Sencer sent to
15 Ms. LaRocca, and I don't object to that.
16 Employer Exhibit 24, again, is our pleading. It's not
17 going in for the truth of the matter. It's just our position
18 on those issues. So I'm not being inconsistent. So that's my
19 position. I want to be very clear. The correspondence to
20 Ms. LaRocca may not come in my view because, although it was
21 sent and received, it serves no purpose because you can't
22 accept the truth of anything said in those letters, or the
23 falsity. They're just irrelevant.
24 HEARING OFFICER STROUP SCAFFIDI All right. Well -- so
25 for --

MR. G. SMITH: I would say in response to that, Your Honor, that one of the main issues that we've talked about here is whether or not the -- the -- the theories of -- of the law that Mr. Rosenfeld has advanced have ever been raised before -- before any of us before. And I want to be able to say that this is a fairly complete record of the documents that were transferred between the parties and the Board during the process of all this, and not one of them refers to like a joint employer status. I think that's an important point to make.

MR. ROSENFELD: Well, I will offer -- I will offer a stipulation that in all of its wisdom and billing, DLA Piper never thought of it.

HEARING OFFICER STROUP SCAFFIDI: Let's go off the record for a minute.

(Off the record at 4:03 p.m.)

HEARING OFFICER STROUP SCAFFIDI: Let's go back on the record.

(Counsel confer)

HEARING OFFICER STROUP SCAFFIDI: You were about to offer a stipulation.

MR. ROSENFELD: Yeah. I was going to offer a stipulation. In all DLA Pipers' -- wisdom in billing, it never thought of this issue.

HEARING OFFICER STROUP SCAFFIDI: Is that a real stipulation?

MR. ROSENFELD: Well, I'm just being sarcastic.

HEARING OFFICER STROUP SCAFFIDI: Obviously. So do you have a genuine stipulation to offer?

MR. ROSENFELD: No. I mean I don't have to our responses to their objections until we come to the hearing. I don't have to write a letter to the Region saying by the way, to put DLA Piper for all of its billing on notice, but there's a joint employer issue now.

HEARING OFFICER STROUP SCAFFIDI: All right.

MR. ROSENFELD: We get to come here and do it. And I don't have to tell Mr. Overstreet either.

HEARING OFFICER STROUP SCAFFIDI: So let's be expeditious about this.

MR. ROSENFELD: And you can tell him that.

HEARING OFFICER STROUP SCAFFIDI: So Employer Exhibit 2, 3, 6, 7, 8, 10, 11, 14, 15, 16, 17, 18, 19, 20, 23, and 25, and 26 are received. Now, as for Employer's Exhibit 4, 5, 9, 12, 13, 21, 22, 24, your objection is noted. They're received in evidence. I will afford them whatever weight they are due when I review the record.

(Employer Exhibit Number 2 through 26 Received into Evidence)

HEARING OFFICER STROUP SCAFFIDI: So do you have any other exhibits or any other witnesses, Mr. Smith.

MR. G. SMITH: Only in the case I can get you the documents that --

HEARING OFFICER STROUP SCAFFIDI: The notice to terminate. Okay. So we're waiting for that.

MR. G. SMITH: Right.

HEARING OFFICER STROUP SCAFFIDI: So, Mr. Rosenfeld, do you have any witnesses?

MR. ROSENFELD: Other than noting that I think we're entitled to the contract --

HEARING OFFICER STROUP SCAFFIDI: Okay.

MR. ROSENFELD: -- we have nothing further at this point.

HEARING OFFICER STROUP SCAFFIDI: Okay. So, Mr. Smith, the Regional Director's representative, are you presenting any witnesses?

MR. T. SMITH: Yes. I'm going to be calling Michael Johnson.

HEARING OFFICER STROUP SCAFFIDI: Okay.

MR. T. SMITH: If I can have a moment off the record.

HEARING OFFICER STROUP SCAFFIDI: Sure.

MR. ROSENFELD: I object, because you don't have authority from General Counsel.

MR. T. SMITH: Yes, I do.

MR. ROSENFELD: Dave Griffin gave you that authority?

MR. T. SMITH: There is a memo that --

MR. ROSENFELD: All right. I want to cross-examine.

MR. T. SMITH: -- delegate --

MR. ROSENFELD: Do it. I have always wanted to cross-

examine him.

HEARING OFFICER STROUP SCAFFIDI: Let's go off the record. (Off the record at 4:06 p.m.)

HEARING OFFICER STROUP SCAFFIDI: Okay. Raise your right hand. Whereupon,

MICHAEL J. JOHNSON

having been duly sworn, was called as a witness herein and was examined and testified as follows:

HEARING OFFICER STROUP SCAFFIDI: State your name and spell it for the record, please.

THE WITNESS: My name is Michael J. Johnson. Michael, M-I-C-H-A-E-L, Johnson, J-O-H-N-S-O-N.

MR. ROSENFELD: He missed the spelling of his middle initial.

THE WITNESS: Just J.

MR. ROSENFELD: See. Pretty good. He spelled his middle initial.

HEARING OFFICER STROUP SCAFFIDI: Let's behave, so we can through this expeditiously.

DIRECT EXAMINATION

Q BY MR. T. SMITH: All right. Mr. Johnson, I'm going to be asking you some questions about an election that was held I believe it was May 2nd, involving Labor Plus. And you were present at the election, correct?

| | |
|---|---|
| <p style="text-align: right;">Page 185</p> <p>1 A Yes.</p> <p>2 Q And what was your role at the election?</p> <p>3 A I was the agent that was in charge of conducting the</p> <p>4 election.</p> <p>5 Q And as part of the setup before the election -- I guess</p> <p>6 let me ask you this. Do you have a particular collection of</p> <p>7 materials that you take to an election?</p> <p>8 A Yes, I do.</p> <p>9 Q And what's included in that group of -- that collection of</p> <p>10 materials?</p> <p>11 A In this particular case, since it was outside on the</p> <p>12 platform of the -- this building, the federal building, I had</p> <p>13 to bring all of the chairs, table, the booth, the election</p> <p>14 notices.</p> <p>15 Q And for the election notices, do you have copies of the</p> <p>16 election notices here with you?</p> <p>17 A Yes.</p> <p>18 Q And before we get to what the actual notices were, can you</p> <p>19 describe, in relation to the booth and the table where the</p> <p>20 observers were at, where these notices were posted?</p> <p>21 A Well, I used a easel from the office, and I posted them on</p> <p>22 the front and the back of the easel, because it was difficult,</p> <p>23 because people were walking in various locations. And we had a</p> <p>24 handicap ramp. So I just put them on the front side of the</p> <p>25 easel and the back side of it.</p> | <p style="text-align: right;">Page 187</p> <p>1 one on the front and one of the back of the easel.</p> <p>2 MR. ROSENFELD: I think should be marked as an exhibit and</p> <p>3 offered into evidence. You just can't show them.</p> <p>4 MR. T. SMITH: It may be possible. It's probably going to</p> <p>5 be difficult to get a scan of it. But I'm not objecting to</p> <p>6 offering them in.</p> <p>7 MR. ROSENFELD: We have enough originals. We need to put</p> <p>8 this -- this is my one chance in my career to get a copy of</p> <p>9 this. Didn't think about that when you put him on the stand,</p> <p>10 did you? I want --</p> <p>11 HEARING OFFICER STROUP SCAFFIDI: When he gets his call,</p> <p>12 let's look to see if we can get them as well.</p> <p>13 MR. ROSENFELD: I want the original.</p> <p>14 HEARING OFFICER STROUP SCAFFIDI: Do they need to be</p> <p>15 smaller?</p> <p>16 I guess let me ask the court reporter. Do they need to be</p> <p>17 smaller in order to get them in?</p> <p>18 THE COURT REPORTER: Usually, we just scan them digitally</p> <p>19 anyway.</p> <p>20 HEARING OFFICER STROUP SCAFFIDI: Oh, okay. Perfect.</p> <p>21 MR. ROSENFELD: And I want my original. I can post that</p> <p>22 at the door in my office.</p> <p>23 Q BY MR. T. SMITH: So the notices that you're holding up, I</p> <p>24 believe they also say no electioneering or loitering, correct?</p> <p>25 A Yes.</p> |
| <p style="text-align: right;">Page 186</p> <p>1 Q Now in relation to where the booth was ate, where were</p> <p>2 these notices at?</p> <p>3 A Maybe 15 feet away from the election booth.</p> <p>4 Q So in relation from where you're sitting to, say, the back</p> <p>5 wall there?</p> <p>6 A Yes, right where that clock would be.</p> <p>7 Q So right where the clock is?</p> <p>8 A Yes.</p> <p>9 Q So if we're looking at ceiling tiles, we're looking at</p> <p>10 from nine to 10 ceiling tiles at two feet each. So maybe</p> <p>11 around 18 to 20 feet?</p> <p>12 A Yes.</p> <p>13 Q Now do you have a copy of those notices that were put up</p> <p>14 with you?</p> <p>15 A Yes.</p> <p>16 Q And where are they at?</p> <p>17 A Right here in the election booth.</p> <p>18 Q I'm sorry. In what?</p> <p>19 A I have them in my election kit.</p> <p>20 Q Can you get those notices, please?</p> <p>21 A Yes.</p> <p>22 Q Now I see that you're holding up a document that says</p> <p>23 voting place. And it looks like there's something attached to</p> <p>24 the back of it.</p> <p>25 A The same voting page. I still have them, because I had</p> | <p style="text-align: right;">Page 188</p> <p>1 Q Okay. Now how many of those notices were posted on that</p> <p>2 day?</p> <p>3 A Two.</p> <p>4 Q Two. And if you can give me an idea. I know I kind of</p> <p>5 asked how far they were from the booth. If you can give me an</p> <p>6 idea where those two notices were located.</p> <p>7 A On the easel, maybe 15 feet away in front of the easel,</p> <p>8 and I put one on the back of the easel.</p> <p>9 Q So 15 feet away. Is that going towards, say Las Vegas</p> <p>10 Boulevard or on north or south of --</p> <p>11 A Going towards Las Vegas Boulevard.</p> <p>12 Q Okay. And did those remain -- or how long did those</p> <p>13 notices remain up?</p> <p>14 A From 10 to 12.</p> <p>15 Q Okay. Were there any other notices that -- or signs that</p> <p>16 you had put up for the election?</p> <p>17 A Yes.</p> <p>18 Q Just one. It's a standard notice that explains to</p> <p>19 individuals about the requirements or the regulations.</p> <p>20 Q And just so we have it for the record, I believe you're</p> <p>21 holding up a document that says -- that starts off saying any</p> <p>22 person who shall willfully resist, prevent, impede, or</p> <p>23 interfere with any member of the board or any of its agents,</p> <p>24 any of -- yes. And it continues on from there. And it</p> <p>25 mentions a \$5,000 fine; is that correct?</p> |

1 A Yes.
 2 Q Okay. And how many of those were posted?
 3 A One.
 4 Q And where was that located at?
 5 A Under the voting place attached to it. I usually attach
 6 it to it.
 7 Q Was there anything else in the area of the election that
 8 was posted that you can recall?
 9 A No.
 10 Q Was there anything else that --
 11 MR. T. SMITH: Actually, I'm going to go ahead and copy
 12 and make those exhibits. And those would be Regional
 13 Director's 2 and 3.
 14 HEARING OFFICER STROUP SCAFFIDI: Any objection to their
 15 receipt?
 16 MR. ROSENFELD: Yes. I'd like to see if they're printed
 17 by a union printer.
 18 May I see them for a moment?
 19 I'm going to object on the grounds that they're not
 20 printed by a union printer.
 21 HEARING OFFICER STROUP SCAFFIDI: Okay. The Board -- or
 22 excuse me -- Regional Director's Exhibits 2 and 3 are received
 23 in evidence.
 24 (Regional Director Exhibit Number 2 and 3 Received into
 25 Evidence)

1 MR. G. SMITH: But I'd like it to be introduced as
 2 evidence if you don't mind.
 3 HEARING OFFICER STROUP SCAFFIDI: Are you planning on
 4 introducing it or are you asking the Regional Director's
 5 representative to introduce it?
 6 MR. G. SMITH: Well, I'm asking him. If he doesn't, I'll
 7 do it myself. Yeah.
 8 MR. T. SMITH: I don't have any objections to it. I
 9 wasn't planning on offering it, but I don't think that it would
 10 hurt either.
 11 HEARING OFFICER STROUP SCAFFIDI: Okay.
 12 Any objection, Mr. Rosenfeld?
 13 MR. ROSENFELD: No.
 14 HEARING OFFICER STROUP SCAFFIDI: Okay. This will be
 15 marked as Regional Director's Exhibit 4, and it is received.
 16 (Regional Director Exhibit Number 4 Received Into Evidence)
 17 Q BY MR. G. SMITH: Did you have any other documents at the
 18 polling place?
 19 A No.
 20 Q Okay. Is it normal for observers to be appointed before
 21 the pre-election conference?
 22 A Yes. It's really -- it's normal. Most union officials or
 23 employer representatives, they would inform the board agent
 24 prior to the election or prior to the pre-election conference
 25 which observer they would have.

1 MR. ROSENFELD: And I'll receive regional copies, right?
 2 Originals.
 3 HEARING OFFICER STROUP SCAFFIDI: You will not receive
 4 originals. You will receive copies.
 5 MR. T. SMITH: And with that, I have no further questions.
 6 HEARING OFFICER STROUP SCAFFIDI: Okay. Mr. Smith, Mr.
 7 Greg Smith --
 8 MR. G. SMITH: Yes.
 9 HEARING OFFICER STROUP SCAFFIDI: -- do you have any
 10 questions for this witness?
 11 MR. G. SMITH: I do.
 12 HEARING OFFICER STROUP SCAFFIDI: Okay.
 13 CROSS-EXAMINATION
 14 Q BY MR. G. SMITH: Did you also have a document at the
 15 election called an observer's instructions or something like
 16 that?
 17 A Yes.
 18 Q Do you have one of those there?
 19 A Yes.
 20 Q Would you show us that? I don't --
 21 A Yes. It says --
 22 Q I know generally what they say, but --
 23 A It says United States of America National Labor Relations
 24 Board instructions to election observers.
 25 Q I don't need you to read it, really.

1 Q In this case, did the Union appoint an observer before the
 2 election?
 3 A No.
 4 Q Okay. Did they ever have an observer?
 5 A Yes.
 6 Q When was that?
 7 A He arrived about 10 minutes after the introduction of the
 8 employer representative and the union representative.
 9 Q Was that 10 minutes into the voting time?
 10 A Yes.
 11 Q All right. And how did he become identified as an
 12 observer?
 13 A It was strange, because he just walked up to the table,
 14 and I didn't he was an observer. And the union official never
 15 told me he's the person. So I questioned him.
 16 He said: Oh, I'm the observer for the Union.
 17 I said: Okay.
 18 So I gave him the instructions at that time. And he read
 19 it and he understood.
 20 Q Okay. So did he go back and check off the names of the
 21 people who had already voted?
 22 A No, they hadn't -- we were in the process of explaining
 23 the purpose of the challenge.
 24 Q I see. And -- okay. Was there any way to -- was there
 25 any rope or anything that tied around the election area?

1 A No.
 2 Q Did you define what the area was to others?
 3 A No.
 4 Q Is it normal for a -- well, did one of the voters come
 5 early and -- around 10:00, and then stay there for the rest of
 6 the voting time?
 7 A Numerous people stayed around. I think they stayed around
 8 because there was limited parking in that area. That day, May
 9 2nd, we had the Floyd Mayweather fight. We had a parade in
 10 front of the election site. And we had the walk for cancer in
 11 front of the election site.
 12 Q So there was both a parade and a --
 13 A The walk for cancer.
 14 Q Walk for the cure?
 15 A Walk for the cure I think it was.
 16 Q And what was the parade about?
 17 A I don't know. It surprised me. I didn't have any idea
 18 there was going to be a parade on Las Vegas Boulevard. We had
 19 knowledge that there was going to be a parade, but it was going
 20 to be on 4th Street, which is behind the Federal Building.
 21 Q And did the parade come after the Susan B. Coleman?
 22 A Throughout the whole election.
 23 Q Throughout the whole election.
 24 A Uh-huh.
 25 Q And how many people were in the parade? Could you tell?

1 A Yes.
 2 Q And so, that race had been going on for some time before
 3 you got there?
 4 A I don't know that, but it was in progress when I started
 5 to set up.
 6 Q And you were there about 9:00, correct?
 7 A Yes.
 8 Q So it'd been going on for some time, but you don't know
 9 how long.
 10 A True.
 11 Q Okay. And people were running by the building, correct?
 12 A Yes.
 13 Q All right. And isn't it true that, as time went on, there
 14 were fewer and fewer people racing, because it had started
 15 before you got there?
 16 A That's true.
 17 Q So within -- before 10:00, when the elections started,
 18 most if not all the racers have gone by, correct?
 19 A Yes.
 20 Q So the race itself was done with, as far as the front of
 21 this building, by the time the election started, correct?
 22 A Yes.
 23 Q So your testimony about this going on during the entire
 24 election was false, wasn't it, inaccurate?
 25 A No, I wouldn't characterize it as false or inaccurate.

1 A It was a lot. It was a lot of music, bands, and walking,
 2 talking. In fact, several people from the parade walked up to
 3 the election site with their dogs.
 4 Q Did you stop them from coming further or --
 5 A Yes.
 6 Q How close did they get? To the top of the stairs?
 7 A Right to the top of the stairs, very close to --
 8 Q Where did you -- did you stand or sit during the election?
 9 A Both.
 10 Q Where did you sit when you sat?
 11 A Right next to the election -- the table next to the
 12 observers.
 13 Q The observers.
 14 A Uh-huh.
 15 Q Okay. So for the two-hour period of time, was -- were the
 16 parades and the march, Susan B. Coleman race for the cure, both
 17 going on throughout that time?
 18 A Yes.
 19 MR. G. SMITH: I have nothing further.
 20 HEARING OFFICER STROUP SCAFFIDI: Mr. Rosenfeld.
 21 CROSS-EXAMINATION
 22 Q BY MR. ROSENFELD: Mr. Johnson, the march regarding the
 23 cancer issue began before you got there, correct?
 24 A Yes.
 25 Q Okay. And people -- it was a race, correct?

1 Q Well, I'm going to characterize it as false. The fact is
 2 there was no race going on at 10:00, because everybody had run
 3 by. Isn't that correct?
 4 MR. T. SMITH: And I'm going to object to the extent --
 5 MR. ROSENFELD: I'm not going to -- if you called him, I
 6 get to pummeling on him.
 7 MR. T. SMITH: -- that the witness was talking.
 8 And I would ask that you don't talk over me.
 9 MR. ROSENFELD: I'm going to pummel him for doing that.
 10 All right. That was wrong for him to do that.
 11 MR. T. SMITH: Out of a matter of respect, and --
 12 MR. ROSENFELD: I have no respect.
 13 MR. T. SMITH: -- this has happened several times in this
 14 hearing, do not talk over other people that are talking.
 15 MR. ROSENFELD: I have no respect.
 16 MR. T. SMITH: It makes it difficult for the court
 17 reporter to make a clear transcript. And the witness was still
 18 talking when you started asking another question. And I would
 19 object to you talking over a witness.
 20 HEARING OFFICER STROUP SCAFFIDI: Mr. Smith's objection is
 21 sustained. Your objection is overruled. Do you have any
 22 additional questions for Mr. Johnson?
 23 Q BY MR. ROSENFELD: So we now know that your testimony is
 24 inaccurate, Mr. Johnson; is that correct?
 25 MR. T. SMITH: Objection.

1 Q BY MR. ROSENFELD: Well, let's talk about the --
 2 HEARING OFFICER STROUP SCAFFIDI: Sustained.
 3 Q BY MR. ROSENFELD: It was incorrect. The race had ended
 4 by the time the election started. Nobody was going by, at
 5 least as far as the race was concerned, correct?
 6 A That's not true.
 7 Q There were a few.
 8 A I can't categorize how many people, but there was a flow
 9 of individuals passing the building.
 10 Q Now you say there was a march?
 11 A Yes.
 12 Q Okay. Was that going up and down Las Vegas Boulevard?
 13 A Yes.
 14 Q Which side, the east side of the west side?
 15 A I guess the west side, closer to the building.
 16 Q Had that march started before you got here?
 17 A I believe so.
 18 Q And was it going on at 10:00, when you started the
 19 election?
 20 A Yes.
 21 Q Was it going on at 11:00?
 22 A Yes.
 23 Q Same people or different people?
 24 A It appeared to be different people.
 25 Q Okay. You're saying -- and it was going on at noon?

1 A No. It had slowed down.
 2 Q When did it slow, 11:00, 10:00?
 3 A I noticed that when I -- at 12:00, it wasn't a lot of
 4 people passing by the building.
 5 Q And there were hundreds of people going by on that parade.
 6 Thousands of people, correct?
 7 A No, I wouldn't say thousands. I'd say hundreds.
 8 Q All right. So over the space of four hours, maybe a few
 9 hundred people went by?
 10 A Four hours. Two hours, I would say maybe 200.
 11 Q Okay. So in the space of two hours, 200 people, correct?
 12 A Yes.
 13 Q That's 100 people per hour, correct?
 14 A Yes.
 15 Q That's one and two-thirds person per minute, correct?
 16 MR. T. SMITH: Objection, relevance.
 17 HEARING OFFICER STROUP SCAFFIDI: Agreed.
 18 MR. ROSENFELD: Well, I'm just pointing out how silly that
 19 is to say that there are 100 people over an hour. An hour is
 20 60 minutes. So that's one and two-thirds person per minute.
 21 HEARING OFFICER STROUP SCAFFIDI: I honestly don't
 22 understand where you're going with this.
 23 MR. ROSENFELD: Well, I don't understand why Mr. Smith --
 24 HEARING OFFICER STROUP SCAFFIDI: If the testimony is that
 25 there are people outside of the polling location, what is the

1 point of this line of questioning?
 2 MR. ROSENFELD: Well, because the Regional Director
 3 somehow, sometimes which I have questions about, decides that
 4 we ought to have a hearing because there's a parade out front
 5 when there was no evidence to begin with offered by the
 6 Employer that that parade, in any way, interfered with what was
 7 going on on the steps. And then I'm shocked to have Mr. Smith
 8 call Mr. Johnson, who then tells us that the parade -- that the
 9 race is going on until noon, and that there are all these
 10 people passing by. And then he tells us there's a march, when
 11 my people told me by 10:00 there was nothing going on. And I
 12 just don't think it was accurate. I'm not going to go further.
 13 And I'm annoyed about this. I've dealt with Mr. Johnson. I've
 14 dealt with Mr. Smith. There was no reason for Mr. Smith to
 15 call him to raise this, and there's no reason for him to say
 16 things which weren't accurate. And I'm sorry. If Mr. Johnson
 17 and Mr. Smith are pissed at me about this, that's life.
 18 MR. T. SMITH: If the --
 19 MR. ROSENFELD: It just wasn't accurate.
 20 HEARING OFFICER STROUP SCAFFIDI: Are you done? Are you
 21 done? Do you have any --
 22 MR. ROSENFELD: I'm not done cross-examining. And I told
 23 him I was going to make this difficult. I don't like this
 24 being done.
 25 HEARING OFFICER STROUP SCAFFIDI: Well, I would appreciate

1 you not being --
 2 Q BY MR. ROSENFELD: Let's talk about --
 3 HEARING OFFICER STROUP SCAFFIDI: Excuse me. I would
 4 appreciate you not being difficult. We have -- I have an
 5 interest in wrapping up this hearing as expeditious as
 6 possible --
 7 MR. ROSENFELD: Well, let's just --
 8 HEARING OFFICER STROUP SCAFFIDI: -- and getting the
 9 evidence that is absolutely relevant, so that I can make a
 10 recommendation as to the challenged ballots and the objections.
 11 I would ask you to behave yourself in a civilized manner.
 12 MR. ROSENFELD: I have been.
 13 HEARING OFFICER STROUP SCAFFIDI: You are certainly within
 14 your right to be upset, but you're not within your right to
 15 take it out on the witness or to behave in a manner that is
 16 unbecoming of this kind of proceeding. Do you understand?
 17 MR. ROSENFELD: All right. Let's keep going.
 18 Q BY MR. ROSENFELD: On a couple of occasions, some dogs
 19 came up the steps, correct?
 20 A Yes.
 21 Q With their owners, correct?
 22 A Yes.
 23 Q And you told them to leave.
 24 A Yes.
 25 Q That didn't interfere with the election, did it?

1 A No.
 2 Q Okay. And there are people who paraded up and down the
 3 street, correct?
 4 A Yes.
 5 Q And none of them came up the steps and interfered in the
 6 election, correct?
 7 A No, that's -- some of them came.
 8 Q They came up the steps?
 9 A Yes.
 10 Q How many do you think?
 11 A I don't know. I'd say maybe three.
 12 Q And you told them that there was something going on and
 13 they couldn't come through.
 14 A Right. I told him that it was a federal building, that it
 15 was closed, that we were conducting an election.
 16 Q Okay. And their coming up the steps didn't stop anybody
 17 from voting, did it?
 18 A No.
 19 Q Didn't interfere in the election, did it?
 20 A No.
 21 Q Okay. And did anybody in the race for the cure come up
 22 the steps?
 23 A I don't recall.
 24 Q Okay. Well, Mr. Johnson, isn't it fair to say that
 25 whatever was going on on Las Vegas Boulevard didn't have any

1 be permissible to call Mr. Johnson to testify as to what he saw
 2 at the election, because board agent misconduct or conduct is
 3 involved. And I'm satisfied that his conduct was appropriate
 4 at the election. There was no problem there. What he was not
 5 called for and I don't believe is authorized to call is to the
 6 process by which the stipulation was entered into. That seems
 7 to me is a very troubling line of questioning, because then we
 8 start board agents as to who said what during the course of
 9 negotiations or administration of the stipulation. And it
 10 seems to me that if Mr. Smith thinks he's got authorization by
 11 Dick Griffin to call him on that issue, fine. I will write a
 12 letter to Dick Griffin about that, because I said -- I want to
 13 be very clear. I understand why Mr. Johnson was called about
 14 what happened on the steps of the courthouse. Employer raised
 15 an objection. It went to hearing. Mr. Johnson told us there
 16 was no problem. Fine.

17 HEARING OFFICER STROUP SCAFFIDI: So --

18 MR. ROSENFELD: But this is a different issue, and I
 19 encourage Mr. Smith to rethink whether he wants to open the
 20 door, because then I get to ask to look at all the emails that
 21 he's looked at, back and forth, his own internal notes about
 22 what happened about this, because I don't think it's proper for
 23 board process to ask Mr. Johnson, as a board agent, what was
 24 said and done in the course of the stipulation on how it was
 25 administered.

1 effect whatsoever on the conduct of the election?
 2 A That's true.
 3 Q Thank you.
 4 MR. ROSENFELD: Nothing further.
 5 HEARING OFFICER STROUP SCAFFIDI: Do you have any
 6 additional questions?
 7 MR. T. SMITH: Very --
 8 MR. ROSENFELD: That's why we'll go after him again.
 9 MR. T. SMITH: Very briefly.
 10 REDIRECT EXAMINATION
 11 Q BY MR. T. SMITH: When you were asked on cross-
 12 examination, you were asked about the parade. After you
 13 learned about the parade -- I guess maybe a preliminary
 14 question. You were involved in the petition in getting the
 15 election location, obtaining a stipulation -- stipulated
 16 election agreement that set the location of the election and
 17 the date of the election, correct?
 18 A Yes.
 19 Q Okay. Now after you learned -- or after you became aware
 20 of the parade that was going to happen, did -- were you
 21 involved in asking the Employer for an alternative location
 22 site for the election?
 23 MR. ROSENFELD: Objection. I'm objecting.
 24 HEARING OFFICER STROUP SCAFFIDI: On what basis?
 25 MR. ROSENFELD: That although -- I understand that it may

1 HEARING OFFICER STROUP SCAFFIDI: Objection number 3 is
 2 that the board agent be able to select a polling place that was
 3 specially and visually separate from the scene of other
 4 activity. Usually, in my 14 years' experience, the election is
 5 held at the Employer's site. I'm guessing that Mr. Smith --
 6 and correct me if I'm wrong -- is getting to the issue of how
 7 we got to hold an election at the Federal Building to begin
 8 with.

9 MR. ROSENFELD: Why don't you --

10 HEARING OFFICER STROUP SCAFFIDI: If I'm wrong on that,
 11 please correct me. But if that's where you're going, I'm going
 12 to allow it.

13 MR. ROSENFELD: He's not going there, because we
 14 stipulated -- the parties stipulated it would be at the --
 15 right where it was. That's what the stipulation said.

16 HEARING OFFICER STROUP SCAFFIDI: Let Mr. Smith talk.

17 MR. T. SMITH: And that's a narrower issue. Doesn't go
 18 exactly to Mr. Rosenfeld's objection. But a stipulated
 19 election agreement was reached. Everyone signed it. That's
 20 not disputed. But, at some point, the parties became aware of
 21 the parade. One of the Employer's objections does go to the
 22 location. And I believe, if I were to make an offer of proof,
 23 that Mr. Johnson would be able to testify to whether or not the
 24 Employer was made aware of this and failed to either object or
 25 offer a place -- an alternative place to have this election be

1 held. And I believe that's the question, what I'm looking at
2 exploring, not to go into how the stipulated election agreement
3 was raised or reached, or anything like that. I don't think
4 that's in question at all.

5 HEARING OFFICER STROUP SCAFFIDI: Okay.

6 Do you still have an objection then --

7 MR. ROSENFELD: Yeah.

8 HEARING OFFICER STROUP SCAFFIDI: -- to that question?

9 MR. ROSENFELD: Exactly, because the burden is on the
10 Employer to prove this not on the Region to prove that
11 something didn't happen. And I think it creates serious policy
12 problems to ask Mr. Johnson to describe what happened in
13 discussions. We're trying to settle things with the Region.
14 And Ms. Sencer handled most of this. And I know that she swore
15 at him on one occasion, because he deserved it. But that's
16 another issue. But that's okay. We still talk. Okay.

17 And I was on a conversation, some conversations late in
18 the day before the stipulation, that Mr. LaRocca conceded she
19 was in New York and wasn't going to get out here. And we knew
20 she was stuck with the stipulation. And so, the point is that
21 I think it's a dangerous road to go down, to start asking board
22 agents what was said in the course of processing a case. And
23 again, I want to -- I'm not upset or concerned. I think it's
24 fair to ask Mr. Johnson what happened on the steps, because
25 that's the thrust of the board agent misconduct. But whether

1 or not the Employer objected to the location or did something
2 is not board agent misconduct. Now if you read that objection
3 as I did, I assumed that he should have selected some other
4 site at the federal courthouse on May 2nd. But you know the
5 evidence is that nobody from the Employer asked him to move the
6 site.

7 HEARING OFFICER STROUP SCAFFIDI: But I think that's the
8 exact question that he's getting at. And so, for those
9 reasons, I'm going to overrule your objection and allow the
10 question.

11 MR. T. SMITH: Thank you. And I do understand Mr.
12 Rosenfeld's. I'm not saying they're not invalid. That's not
13 the extent that I want to go into the questions. Maybe it'd be
14 clearer just to ask a simple yes or no question.

15 Q BY MR. T. SMITH: Was there any discussion with the
16 Employer prior to the election about the fact that there were
17 going to be events going on on Las Vegas Boulevard?

18 A Yes.

19 Q What alternative locations did the Employer offer, if any,
20 for any location site?

21 A Number one, a library.

22 Q And I'm sorry, is this after -- and I'm talking only after
23 the stipulated election agreement was reached and after you
24 started discussing -- became aware of the parade. So after
25 became aware of the parade and in talking with the Employer,

1 from that point until the date of the election did the Employer
2 offer any locations to meet?

3 A Yeah. What I can recall that we -- it was difficult to
4 get -- the Employer did not want us on the premises. And the
5 Union was unable to get -- find a location. Therefore, we went
6 with plan B, was to try to find a conference room. So we
7 couldn't find -- and the Union couldn't find a conference room.
8 Plan C was to find a library. We did find -- I did call and
9 contact the library. However, it opened up at 10:00. So that
10 wasn't -- the time was going to be an issue. So that's why we
11 selected the Foley Federal Building because that was the only
12 place that we could have the election on May 2nd.

13 Q And to make sure that I'm clear, but the Foley Federal
14 Building was selected as part of the stipulated election
15 agreement, correct?

16 A No. We had TBA, to be determined, in the place for the
17 location of the election. I think it was TBA.

18 Q So is it fair to say, though, that there was no agreement
19 that was reached to modify the election place to some other
20 location than other -- other than in front of the Foley
21 Building?

22 A That's true.

23 Q Okay. And it has not been addressed, but why wasn't the
24 election held inside the Foley Building, if you know?

25 A Well, we learned that the Federal Protective Services and

1 the U.S. Marshals would not allow individuals in the building
2 due to judges. They didn't want individuals close to judges on
3 the elevator because of the security risk. So that's why we
4 couldn't have it inside.

5 Q Well, and you mentioned federal marshals and security. Do
6 they have the same security that would be there on the day of
7 the election?

8 A No, they didn't. I learned that they did not. They only
9 had one. It was a Federal Protective Service individual. They
10 didn't have the U.S. Marshals present.

11 MR. T. SMITH: I have no further questions.

12 HEARING OFFICER STROUP SCAFFIDI: Okay. Do you have any
13 questions, Mr. Smith?

14 MR. G. SMITH: Yes.

15 RECROSS-EXAMINATION

16 Q BY MR. G. SMITH: After the election hearing was entered
17 into there was yet another objection by the Employer, was there
18 not, in writing?

19 MR. ROSENFELD: Objection. Goes beyond the scope of
20 direct.

21 MR. G. SMITH: It's exactly --

22 HEARING OFFICER STROUP SCAFFIDI: And this is a non-
23 adversarial proceeding so cross is allowed to go beyond the
24 scope of direct.

25 MR. ROSENFELD: Well, it's also -- he's not authorized to

1 -- good. I'm going to -- if you're going to let him ask that
 2 question, I'm going to ask him discussions he had with the
 3 regional director.
 4 HEARING OFFICER STROUP SCAFFIDI: Well, then we'll --
 5 MR. ROSENFELD: I'm going to have a lot of fun.
 6 HEARING OFFICER STROUP SCAFFIDI: And then we'll deal with
 7 that question when you ask it.
 8 Go ahead, Mr. Smith.
 9 Q BY MR. G. SMITH: Let me show you a document that's
 10 already in evidence as Employer's Exhibit 11 and ask if you
 11 recognize that.
 12 A Yes, I think so. I remember this. I do recall.
 13 Q It was an objection to the election being held on --
 14 outside the Foley Building, wasn't it?
 15 MR. ROSENFELD: Excuse me. That's not Employer Exhibit
 16 11. What is it?
 17 THE WITNESS: It's April -- dated April 27th at Employer
 18 Exhibit Number 12.
 19 MR. ROSENFELD: Thank you.
 20 MR. G. SMITH: Oh, I'm sorry.
 21 MR. T. SMITH: And like Mr. Rosenfeld, I would object to
 22 questions about the document. This is communications from DLA
 23 Piper. But it does exceed the scope of direct. But then in
 24 addition to that, the relevance of the communication -- or
 25 questions about the communication.

1 MR. G. SMITH: Well, just hearing Mr. Rosenfeld argue that
 2 there was no objection raised to this location.
 3 MR. T. SMITH: Mr. Rosenfeld is not testifying, though.
 4 The witness is testifying. He's testified as to -- from the
 5 date of the stipulated election agreement forward.
 6 MR. G. SMITH: So am I.
 7 HEARING OFFICER STROUP SCAFFIDI: What's the -- all right.
 8 So you're talking about Exhibit 12?
 9 MR. G. SMITH: This is a date after the election agreement
 10 was entered into.
 11 MR. T. SMITH: And the document's in the record. The
 12 document speaks for itself.
 13 MR. G. SMITH: Well, Mr. --
 14 HEARING OFFICER STROUP SCAFFIDI: I agree. So what is
 15 your question to him again, Mr. Smith?
 16 MR. G. SMITH: Well, I just asked him if he recognized it
 17 so far. But, I mean, I -- it's already in evidence. I just
 18 wanted to bring it to your attention and to the parties'
 19 attention that there was an objection. That's all. The record
 20 clearly indicated that there was no objection. I didn't want
 21 it to stand that way. Just --
 22 HEARING OFFICER STROUP SCAFFIDI: Okay. Do you have any
 23 other questions?
 24 MR. G. SMITH: No.
 25 HEARING OFFICER STROUP SCAFFIDI: Mr. Rosenfeld?

CROSS-EXAMINATION

1
 2 Q BY MR. ROSENFELD: And Mr. Johnson, there was a stipulated
 3 election agreement, was there not?
 4 A Yes.
 5 Q And that stipulated election agreement has a place for the
 6 initials of the representatives of the parties, correct?
 7 A Yes.
 8 Q And who was the representative of the party for the Union
 9 who executed it?
 10 A For the Union? Caren Sencer.
 11 Q Thank you. And who executed that by initialing it for the
 12 Employer?
 13 A Dianne LaRocca.
 14 Q And she was in New York, correct?
 15 A Yes.
 16 Q Did she not initial a stipulated election agreement
 17 providing that the election would be in front of the Foley
 18 Federal and U.S. Courthouse Building located at 300 Las Vegas
 19 Boulevard, South Las Vegas, Nevada?
 20 A Yes.
 21 Q Okay. So she agreed, did she not, that the election would
 22 be conducted in front of the -- right in the front of this
 23 building?
 24 A Yes.
 25 Q And she initialed the election agreement. Why don't I

1 show it to you. It's Employer Exhibit 10. Isn't that a
 2 stipulated election agreement? I'm showing the first page.
 3 Those are initials, DL, correct?
 4 A Yes.
 5 Q And those are CPS. That's Ms. Sencer?
 6 A Yes.
 7 Q And they -- everybody agreed the election would be in
 8 front of the Foley Federal and U.S. Courthouse Building located
 9 at 300 Las Vegas Boulevard, South Las Vegas, Nevada?
 10 A Yes.
 11 Q Right downstairs?
 12 A Yes.
 13 Q You understood everybody agreed that would be the
 14 location?
 15 A Yes.
 16 MR. T. SMITH: Objection. Relevance. What he understands
 17 to -- the document speaks for itself.
 18 MR. ROSENFELD: All right. I'll try again. I'll take the
 19 word "understand" out of it.
 20 HEARING OFFICER STROUP SCAFFIDI: Yeah. Just rephrase.
 21 Yeah.
 22 Q BY MR. ROSENFELD: This was a stipulated election
 23 agreement; was it not?
 24 A Yes.
 25 Q Okay. And as the Board agent did you have to do anything

1 with that agreement that was reached?
 2 A I had to have all of the signatures from the parties.
 3 Q And did you get all the signatures of the parties?
 4 A Yes.
 5 Q So both parties, the Union and the Employer, agreed the
 6 election would be downstairs in front of the federal
 7 courthouse, correct?
 8 A Yes.
 9 Q And that was because there were issues about holding it at
 10 the Wynn or at the Employer's place of business, correct?
 11 A Yes.
 12 Q Thank you. And Ms. LaRocca signed off on the agreement
 13 that said it would be here; did she not?
 14 A Yes.
 15 Q And so did Ms. Sencer?
 16 A Yes.
 17 Q And did you sign off on that?
 18 A Yes.
 19 Q Thank you. Look at the third page. It says, "Recommended
 20 by Michael Johnson."
 21 A Uh-huh.
 22 Q Michael Johnson is Michael Johnson, correct?
 23 A Yes.
 24 Q That's you? And then did our eminent regional director
 25 approve that? Is his signature there?

1 A Yes.
 2 Q So everybody agrees that both parties agreed the election
 3 would be in front of the courthouse, right?
 4 A Yes.
 5 Q Thank you. And the regional director approved it?
 6 A Yes.
 7 Q And you don't have the power to overrule him, do you?
 8 A No.
 9 Q Okay. So that approval was on April 24th; was it not?
 10 A Yes.
 11 Q Thank you. And the letter which Mr. Smith -- Mr. Greg
 12 Smith showed you was dated April 27th, correct? Employer
 13 Exhibit 12?
 14 A Yes. April 27th.
 15 MR. G. SMITH: I'll stipulate that it's the 27th.
 16 MR. ROSENFELD: All right.
 17 Q BY MR. ROSENFELD: And that was after DLA Piper on behalf
 18 of his client agreed the election would be here, correct?
 19 A Yes.
 20 Q Okay. And --
 21 MR. ROSENFELD: Nothing further.
 22 HEARING OFFICER STROUP SCAFFIDI: Do you have any
 23 additional questions?
 24 MR. T. SMITH: No further questions.
 25 HEARING OFFICER STROUP SCAFFIDI: Any additional

1 questions?
 2 MR. G. SMITH: No.
 3 HEARING OFFICER STROUP SCAFFIDI: I just have a question.
 4 So you testified about the location of your voting place signs.
 5 So the Employer has presented pictures. And so if you will
 6 look at Employer Exhibit 19A? Can you just describe where
 7 those posters were? Where the -- they were on an easel,
 8 correct?
 9 THE WITNESS: Easel right in front of this --
 10 HEARING OFFICER STROUP SCAFFIDI: In front of the pillar?
 11 THE WITNESS: -- pillar, the pillar. Right in front of
 12 the pillar.
 13 HEARING OFFICER STROUP SCAFFIDI: So facing the stairs?
 14 THE WITNESS: Yes.
 15 HEARING OFFICER STROUP SCAFFIDI: Okay. Thank you. Okay.
 16 Any other questions? Do you have any other witnesses, Mr.
 17 Smith?
 18 MR. T. SMITH: No questions. No more witnesses.
 19 HEARING OFFICER STROUP SCAFFIDI: Okay. Where are we on
 20 the status of that -- of the documents, Mr. Smith?
 21 MR. G. SMITH: Well, I haven't heard. But I have a
 22 question about what you just raised.
 23 HEARING OFFICER STROUP SCAFFIDI: Okay.
 24 RECROSS-EXAMINATION (CONTINUED)
 25 Q BY MR. G. SMITH: What did you mean just now when you said

1 that the election booth was in front of the pillar?
 2 A The easel.
 3 Q Oh, the easel was in front of the --
 4 A Easel. Uh-huh. Yes. Not the election booth. The easel.
 5 Q All right. Where was the booth?
 6 A The booth?
 7 Q This is --
 8 A Right here. Right here.
 9 Q The booth is written on there. But you don't have to
 10 believe --
 11 A I have a picture. I have a picture of the -- it was right
 12 here. No, I have it. It's perfect. It's right here to the
 13 right of the pillar.
 14 Q The booth was?
 15 A Yes. The table --
 16 Q So people from the street could see the booth?
 17 A The table was right here. And the booth was behind the
 18 pillar.
 19 Q Oh, okay.
 20 A Uh-huh. It was behind the pillar.
 21 MR. G. SMITH: Okay. Nothing further.
 22 HEARING OFFICER STROUP SCAFFIDI: Okay. Any additional
 23 questions, Mr. Rosenfeld?
 24 MR. ROSENFELD: Nothing.
 25 HEARING OFFICER STROUP SCAFFIDI: Mr. Smith?

1 MR. T. SMITH: No questions.
 2 HEARING OFFICER STROUP SCAFFIDI: Okay. So Mr. Greg
 3 Smith, what -- I guess -- you haven't heard, I guess, whether
 4 they're being transmitted or whether there's an issue with
 5 presenting them?
 6 MR. G. SMITH: Yes. There's an issue with presenting
 7 them. My current instructions are that you cannot present
 8 them.
 9 HEARING OFFICER STROUP SCAFFIDI: The termination notice?
 10 MR. G. SMITH: Right.
 11 HEARING OFFICER STROUP SCAFFIDI: Okay. And I believe we
 12 were looking to have another -- some other documents, too,
 13 right?
 14 MR. G. SMITH: Yeah. The --
 15 HEARING OFFICER STROUP SCAFFIDI: The emails?
 16 MR. G. SMITH: The emails. And I can't get those either.
 17 MR. T. SMITH: Can I have a moment to excuse the witness?
 18 HEARING OFFICER STROUP SCAFFIDI: Oh, yes. I'm sorry.
 19 Thank you.
 20 THE WITNESS: You're welcome.
 21 MR. ROSENFELD: Michael, thank you very much.
 22 THE WITNESS: Thank you very much, Mr. Rosenfeld.
 23 HEARING OFFICER STROUP SCAFFIDI: Thanks.
 24 Mr. ROSENFELD: Appreciates your efforts.
 25 THE WITNESS: Oh, yes. Thank you.

1 MR. ROSENFELD: That the rules now contemplate that in
 2 order to expedite these hearings matters should be argued
 3 orally. You're right. This is a very simple case at this
 4 point. I agree that if you go into some other areas it could
 5 be more complicated. But it can be decided on a very simple
 6 basis. And to allow briefs is only to delay the right of these
 7 workers to be represented. And I strongly and vigorously
 8 oppose any briefing. Mr. Smith's been around a long time.
 9 He's a very competent lawyer. He can argue it orally. I'm not
 10 so good. But I'm going to try.
 11 HEARING OFFICER STROUP SCAFFIDI: What is your position on
 12 briefing?
 13 MR. G. SMITH: I'd like to have a brief.
 14 MR. ROSENFELD: I object to a brief.
 15 HEARING OFFICER STROUP SCAFFIDI: Okay.
 16 MR. ROSENFELD: There's no reason for it. And if you give
 17 him a brief, I'm going to raise a big fuss about this. This --
 18 HEARING OFFICER STROUP SCAFFIDI: I'm not surprised. So
 19 I'm going to allow briefs, but only on --
 20 MR. ROSENFELD: Well, have them due tomorrow.
 21 HEARING OFFICER STROUP SCAFFIDI: Can I finish?
 22 MR. ROSENFELD: No. I really object. This --
 23 HEARING OFFICER STROUP SCAFFIDI: I understand that you
 24 really -- I wasn't -- I didn't understand you to be just
 25 kidding. I understand your objection. Here's the issue. I'm

1 MR. ROSENFELD: You ran a great election.
 2 THE WITNESS: Thank you.
 3 MR. ROSENFELD: And we won, too.
 4 HEARING OFFICER STROUP SCAFFIDI: Let's go off the record
 5 while they're -- do you need --
 6 MR. T. SMITH: No, I'll -- I don't --
 7 HEARING OFFICER STROUP SCAFFIDI: Okay. So are you --
 8 THE COURT REPORTER: Off the record?
 9 HEARING OFFICER STROUP SCAFFIDI: No. Let's stay on the
 10 record.
 11 THE COURT REPORTER: I'm on.
 12 HEARING OFFICER STROUP SCAFFIDI: Okay. So you're not
 13 going to put in the termination notice. What is the status of
 14 the emails?
 15 MR. G. SMITH: The same as that.
 16 HEARING OFFICER STROUP SCAFFIDI: You're not putting them
 17 in?
 18 MR. G. SMITH: Right.
 19 HEARING OFFICER STROUP SCAFFIDI: Okay. Well, with that
 20 said, you know, oral arguments are preferred. The case seems
 21 pretty straightforward to me. Do the parties want to brief
 22 this case?
 23 MR. ROSENFELD: Not only do I not want to brief it, I
 24 object to briefs.
 25 HEARING OFFICER STROUP SCAFFIDI: On what basis?

1 going to allow the briefing on the issue of the reasonable
 2 expectancy of continued employment. As I said, I don't believe
 3 that's the correct test. It seems to me the test is whether
 4 they were employed on the payroll ending date and on the date
 5 of the election. So if you would like to brief that the
 6 appropriate test is a reasonable expectancy of continued
 7 employment, then I would welcome that.
 8 And then on objections one and two. As to objections
 9 three through ten I would just ask the parties to argue them
 10 orally.
 11 MR. ROSENFELD: I'm going to argue it all orally.
 12 HEARING OFFICER STROUP SCAFFIDI: And that's fine.
 13 MR. ROSENFELD: And reserve the right to file a brief. I
 14 ask that any brief be due tomorrow at noon.
 15 HEARING OFFICER STROUP SCAFFIDI: No. The brief will be
 16 due --
 17 MR. ROSENFELD: You don't have to give seven days. What
 18 about Friday?
 19 HEARING OFFICER STROUP SCAFFIDI: I understand what I can
 20 do.
 21 MR. ROSENFELD: Well, I'm making a point of making a
 22 record that you shouldn't grant time.
 23 HEARING OFFICER STROUP SCAFFIDI: I understand. So today
 24 is the 27th. I would ask that they be due on June 1st.
 25 They're very limited issues.

1 MR. ROSENFELD: I object. That's much too long.
 2 HEARING OFFICER STROUP SCAFFIDI: Understood.
 3 And so with that, Mr. Smith, would you like to orally
 4 argue your position with respect to objections three through
 5 ten?
 6 MR. G. SMITH: I would like to be able to address that in
 7 a brief, too. I think I mentioned --
 8 MR. ROSENFELD: You deny that request.
 9 MR. G. SMITH: I think I mentioned a couple times that I
 10 was up most of the night in the hospital. And I'm tired.
 11 MR. ROSENFELD: Well, then we'll come back tomorrow. Let
 12 him argue it tomorrow.
 13 HEARING OFFICER STROUP SCAFFIDI: Would you be able to
 14 brief all of it by the 1st?
 15 MR. G. SMITH: Yes.
 16 MR. ROSENFELD: I object.
 17 HEARING OFFICER STROUP SCAFFIDI: Okay. IF you would like
 18 to orally -- I'm going to grant it. And if you would like to
 19 orally argue now --
 20 MR. ROSENFELD: Make him come back tomorrow. The real
 21 reason he's doing this is because he can't do it. He's going
 22 to rely on DLA Piper to do it.
 23 HEARING OFFICER STROUP SCAFFIDI: That's not really here
 24 or there. So he would like to --
 25 MR. ROSENFELD: Well, it is here. I respect --

1 HEARING OFFICER STROUP SCAFFIDI: Did you file a motion to
 2 dismiss?
 3 MR. ROSENFELD: I don't have to. I'm here doing it. No.
 4 HEARING OFFICER STROUP SCAFFIDI: I'm asking if -- whether
 5 you had filed a motion to dismiss --
 6 MR. ROSENFELD: No.
 7 HEARING OFFICER STROUP SCAFFIDI: -- prior to this moment?
 8 MR. ROSENFELD: No. Because you don't file a motion to
 9 dismiss objections, Madam Hearing Officer. You file exceptions
 10 to the regional director's report. But you can't do that
 11 anymore. You just come and litigate. That's why I'm here
 12 telling you they're untimely. Jeppers. The new rules don't
 13 envision all that stuff we used to do. It says you show up and
 14 you argue your case. You don't write briefs. You make your
 15 point and we go on with life so the workers have
 16 representation --
 17 HEARING OFFICER STROUP SCAFFIDI: Okay.
 18 MR. ROSENFELD: -- not so that lawyers get to bill and
 19 make money.
 20 HEARING OFFICER STROUP SCAFFIDI: Okay. So moving on, you
 21 would like to orally argue.
 22 MR. ROSENFELD: Yeah, I am. That's my first point.
 23 HEARING OFFICER STROUP SCAFFIDI: Okay.
 24 MR. ROSENFELD: Thank you.
 25 HEARING OFFICER STROUP SCAFFIDI: Understand.

1 HEARING OFFICER STROUP SCAFFIDI: We have ten minutes. If
 2 you would like to orally argue --
 3 MR. ROSENFELD: We don't have ten -- I'm going to argue
 4 the whole case and it's going to take me more than ten minutes.
 5 You can't --
 6 HEARING OFFICER STROUP SCAFFIDI: What time do we have to
 7 be out of here by, Mr. Smith?
 8 MR. T. SMITH: They'll let us stick around. Or at least if
 9 -- as long as we're going to be able to wrap up fairly soon --
 10 HEARING OFFICER STROUP SCAFFIDI: Okay.
 11 MR. T. SMITH: -- we're not going to run into any
 12 problems. But we're still going to have to escort people out
 13 individually.
 14 HEARING OFFICER STROUP SCAFFIDI: Okay. Okay.
 15 Well, with that I would ask that you go ahead and orally
 16 argue what you would like.
 17 MR. ROSENFELD: All right. First of all, the election
 18 objections were untimely. The election was on May 2. The
 19 election objections according to the report was filed May 11.
 20 May 2 was a Saturday. And because the election objections can
 21 be filed electronically they could have been filed within seven
 22 days. They weren't.
 23 HEARING OFFICER STROUP SCAFFIDI: Okay.
 24 MR. ROSENFELD: So the objections should be dismissed as
 25 untimely filed. Okay. I'll deal --

1 MR. ROSENFELD: The election objections were untimely. It
 2 was very simple. I don't know why I'm getting hassled over
 3 that. I'll get --
 4 HEARING OFFICER STROUP SCAFFIDI: I don't know why you're
 5 getting so excited about it.
 6 MR. ROSENFELD: I'm getting excited. I thought it was a
 7 good point. So let's just deal with what happened on the front
 8 steps here of the courthouse. The election began at 10:00.
 9 There were the remnants of a parade and of the Race For the
 10 Cure walking by the building. That was 40 to 50 feet away from
 11 the polling place, which as we all know was up the steps in
 12 kind of an overhang of the building.
 13 The voting booth was behind the pillar. So it was totally
 14 secret. In other words, the evidence is that you might have
 15 been able to see the edge of a booth -- of the booth. But
 16 otherwise the voter would go behind the booth with his back to
 17 the pillar, put the shroud or the cloth over his or her head,
 18 and vote in secrecy. So the secrecy of the voting process was
 19 never interfered with.
 20 The Employer agreed to this location. The stipulation, as
 21 you'll remember from my last examination of Mr. Johnson, was
 22 the parties agreed it would be on the front of this courthouse.
 23 That's exactly where it was at. The Employer agreed. The
 24 Union agreed. The regional director authorized it.
 25 Now, there is a letter on April 27th where Ms. LaRocca

1 apparently has second thoughts and now says I think it's an
2 open space, it's going to be a problem. But she agreed to it.
3 She didn't make any particular point in the letter about why it
4 would somehow interview with the -- either the secrecy of the
5 ballot or any other Board process. Keep in mind, the focus of
6 Board elections is secrecy and also no campaigning within the
7 voting area. Those are kind of the two issues: electioneering
8 and secrecy.

9 So what we had happen here was both no question about the
10 secrecy of the ballot and electioneering -- Mr. Holmstrom and
11 every witness -- neither Mr. Holmstrom nor Mr. Johnson
12 identified any electioneering that went on in the polling area.
13 None. Zero. He wasn't asked. He was asked was there
14 discussion. Yeah, there was chitchat. But the Board has never
15 said that it interferes with the election for workers to
16 chitchat in the polling place. An observer has the right to
17 say hi, how are you.

18 Now, it is true that there was one worker who was in and
19 out, out of the area. But there's no evidence that he was here
20 when there was a voter. In fact, Mr. Holmstrom said that he
21 left the area, as I remember, when a voter showed up. So I
22 don't even think that's significant to comment on. But the
23 fact is there was no electioneering in the voting area.

24 The Employer also raised this issue of identification of
25 voters before voting. The Board doesn't require that. In

1 other problems. So that's a silly objection.

2 This claim that the Board agent failed to secure the
3 polling place -- Mr. Johnson claimed exactly what he did. And
4 Mr. Holmstrom conceded it was secure. There were no problems
5 except two dogs. And nobody claimed that the two dogs tried to
6 vote. And I know they would have voted for the Union, too. So
7 had they been able to vote, we wouldn't have challenged them.
8 Right? Apple -- agrees, dogs vote for the Union. And they
9 will ultimately be strong supporters in this right to shirk
10 state join the Union.

11 There's a claim that the Union representatives and our
12 agents engaged in electioneering. Now, keep in mind that that
13 has -- that allegation is that there's an agent of the Union.
14 At best the observer is an agent. No evidence he engaged in
15 any campaigning. There's no evidence any other agent of the
16 Union was there. There may have been other employees, but
17 they're not agents. And there are plenty of Board cases,
18 including a case I did that deals with that question. And you
19 have to have someone who's really an apparent agent of the
20 Union engaging in campaigning before that's grounds to set
21 aside the election. It's a case called IBG and Teamsters Local
22 556.

23 There's a claim that the observer engaged in
24 electioneering by engaging in conversations. Talking to
25 people, which are brief, is not electioneering. And so each of

1 fact, that's kind of a racist thing to argue because the only
2 reason employers like to check the identification is to keep
3 workers who are Hispanic from voting because of concerns about
4 status. And I think that that's why this was thrown in here.
5 But the Board has never required voters be ID'd be either
6 company ID or by driver's license or passports or anything
7 else. Because they rely on the observers to identify. That's
8 the reason for the observers.

9 Now, I'm aware of some elections where parties agree
10 because there are large numbers of peoples and observers may
11 not know everyone where sometimes they ask for company IDs.
12 But that's by agreement of the parties. That didn't happen
13 here. So that objection is silly.

14 And it's also silly because the Employer's observer,
15 although asked one person to ID, conceded he forgot to ask
16 everybody else. So it's his fault. And it's the Employer's
17 fault for choosing an observer who didn't know people. So they
18 come here complaining because they screwed up and chose the
19 wrong observer.

20 But in any case, our observer, the Union observer, and Mr.
21 Olson (phonetic) checked off everybody. Nobody raised a fuss.
22 So by checking off the voter he was agreeing it was a proper
23 voter. And we know that there was no question because the only
24 names that were checked off were names on the -- on voter
25 eligibility lists. No evidence of duplication. No evidence of

1 these objections about what occurred at the front of the
2 building are to be dismissed easily.

3 I think, Madam Hearing Officer, you can see this in the
4 pictures which obviously weren't taken -- were taken later.
5 But you can see how -- and when you walk in the building, which
6 you've observed, how this was kind of a sheltered area. It was
7 way away from the -- substantially away from the parade. And
8 there's no evidence from Mr. Johnson or anybody else that there
9 was any interference with the voting process by outsiders or
10 anyone else.

11 As a matter of fact, the Board should adopt a rule that
12 all elections should be offsite. And I'll cite for that the 2
13 Sisters case which holds that the regional director has the
14 authority to order elections offsite. In my view, it's not
15 right to hold an election at the place of -- where the Employer
16 -- the locus of the Employer's power. It should be done
17 offsite where workers have more free choice, which they did
18 here.

19 So let me address the issue of who was eligible to vote.
20 I want to frame it that way because I think you framed it that
21 way. I think that's sort of what the regional director was
22 doing, but he didn't artfully say that. All right?

23 Now, we know that there was a voter eligibility list which
24 is Employer Exhibit 11 and Regional Director Exhibit 1.
25 They're the same. Now, this was prepared by the -- by the

1 company in response to the Board rules. And it was two days
2 after the regional director approved the stipulation, which was
3 on the 24th of April. So presumably, this was done on April
4 26th. There was no testimony, but presumably it was done in
5 accordance with the Board's new rule to provide the voter
6 eligibility list two days after the approval of the election.

7 So this was a list of the employees that the Employer
8 thought were eligible to vote as of that time. And you'll note
9 that there are two names who are permitted to vote subject to
10 challenge on the last page. So we begin this case with a
11 presumption that they're all eligible and that the Employer
12 agrees they're eligible.

13 So the election is May 2, Saturday. So the question does
14 anything change? Well, we know that none of them quit by -- I
15 said I resign. None of them were fired. None of them
16 terminated. None of them abandoned their employment. So
17 they're all still employed. And Ms. Taratko repeatedly,
18 probably 20 times, said yeah, they remain employees, they're
19 employees of Labor Plus. So on May 2 they remained eligible to
20 vote because they remained employees of the company.

21 Now, it is true that there are, in her estimate, five
22 people -- five of these workers who may transitioned to being
23 paid by the Wynn on May -- as of sometime on May 2. Now, what
24 we know is that on May 1 and May 2, we have Employer Exhibit 26
25 -- I'm sorry, 25 here. We're at 25. So now --

1 And this kind of gets to my -- to an Employer issue, which
2 you really have to -- unless you conclude that they remain
3 employees of Labor Plus without question, you have to then
4 decide on May 1 and 2 they are on the Labor Plus Excel
5 spreadsheet, the list of the workers who are going to work the
6 show. Some of them sign in. But at some point, Ms. Coakley
7 from the Wynn whites out their names -- apparently from what we
8 can best tell, because nobody is sure here -- making some
9 changes in payroll. That is, who's going to pay them. Not
10 who's directing them. Not what their work is. Not when they
11 sign in. Not when they sign out. Not who their supervisor is.
12 But simply making a change after May 2 saying apparently the
13 Wynn will pay them, not Labor Plus.

14 Now, I've said twice now after May 2. Because there's no
15 evidence that these five workers weren't still effectively
16 employees of Labor Plus on the morning of May 2. And you just
17 have to also keep in mind that May 1 is before May 2. And the
18 show was 3 to 9 on May 2. So as of the morning of May 2 when
19 they show up, they are still employees of Labor Plus even
20 though later Ms. Coakley, in filling out this form, apparently
21 whites some of the information out, apparently just
22 transferring the question of who's going to pay -- make the
23 payroll check, not who becomes their employer.

24 So our position, Madam Hearing Officer, is that a simple
25 answer to this question -- I mean, if you want to be -- you

1 MR. T. SMITH: Sorry to interrupt, but if I may? And I'm
2 not asking you to stop. But I'll try to make the copies of the
3 exhibits that I've not presented yet.

4 HEARING OFFICER STROUP SCAFFIDI: Okay.

5 Mr. T. SMITH: If that's okay?

6 HEARING OFFICER STROUP SCAFFIDI: Yes.

7 MR. ROSENFELD: You're going to leave during my oral
8 argument? You're insulting me. That's okay.

9 MR. T. SMITH: I don't mean any insult.

10 MR. ROSENFELD: I know. No, I know.

11 MR. T. SMITH: And I think you know that.

12 MR. ROSENFELD: I know. So anyway, let's go back to
13 Employer Exhibit 25. We know that through April 30th we have a
14 crew of 14. Now, the eligibility list includes others because
15 the eligibility list includes some people who are swing. That
16 is, they work when needed. But we know that as of May 1, the
17 list is the same. And that's the May 1st Excel spreadsheet.
18 And on May 2nd, the lists are the same. It has the same people
19 on it. But we know at some time somebody whited out some of
20 the names. And the thing to keep in mind -- although I don't
21 think this is really necessary -- is that those changes were
22 not made apparently until after May 2. So as of April -- as of
23 May 1 and May 2, these workers whose -- portions are whited out
24 where still on the Labor Plus schedule. They're still
25 effectively employees of Labor Plus.

1 could issue your decision on June 2. You could do it before
2 it. But would be that as to the challenged ballots that are
3 listed in the Regional Director's report, it's undisputed that
4 Trent Utterback, Kendall Zobrist, Eric Shafer -- his name is
5 Schafer, I'll skip Chris Portzer for the moment, William -- not
6 William Stephenson -- Brent Portzer, Brian Pomeroy, Douglas
7 Tait, Eric Fouts, Hector Lugo, Eric Meyer, Luke Cresson, Debbie
8 Jensen-Miller are all eligible to vote.

9 It is disputed by the Employer about Mr. Herlihy, Mr.
10 Stephenson, Mr. Weigant, and -- because they claimed that these
11 were some of these people that transitioned before May 2nd, but
12 we do know -- so, theoretically, you could issue a decision
13 saying that doesn't affect the outcome.

14 Now, you'll note that as to the challenged ballots, the
15 Regional Director did not direct an election for Mr. Contini,
16 because he didn't vote, and for Collin Barnes. So if you go
17 and look at the voter list, Mr. Cresson there's no dispute
18 about -- we're just going down the numbers. Mr. Fouts there's
19 no dispute, that's number four. Mr. Herlihy there is some
20 dispute, but as I've explained, he's one of these people who's
21 on the Excel spreadsheet who works both shows on May 1st and
22 2nd. There's no evidence that he loses his employee status
23 with Labor Plus and, at best, there's some evidence that
24 sometime after May 2, Ms. Coakley changes the payroll status,
25 but doesn't change the employer status. Debbie Jensen-Miller --

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1 is on the Excelsior list. She's not something to this issue.
 2 Timothy Karlisen doesn't vote. Heather Lewis is subject to the
 3 same issue I've talked about. Hector Lugo is eligible, Eric
 4 Meyers is eligible, Brian Pomeroy is eligible, Bret Portzer is
 5 eligible, Eric Shafter is eligible, Mr. Stephenson is subject
 6 to the same issue. Doug Tait is eligible, Trent Utterback is
 7 eligible, Mr. Weigant is subject to this issue, and Kendall
 8 Zobrist is eligible, and finally, Christopher Portzer vote
 9 subject to challenge and the Regional Director does not direct
 10 a hearing on that. So he is eligible to vote, because the
 11 Regional Director didn't find there was an issue, apparently,
 12 as to his eligibility to vote. No, I'm sorry, you're wrong
 13 there. Yes, that was in the challenged ballots and our
 14 position is that he was eligible to vote, because the Employer
 15 put him on the Excelsior list and offered no evidence that he
 16 had been terminated or lost his employment as of that date. So
 17 he's eligible to vote since he was on the Excelsior list. I
 18 know it said voter eligibility list.
 19 So let's go back to where I think we are. The Employer
 20 provides the voter eligibility list. You're all employed by
 21 Labor Plus on May 2, in the morning. As to four of them who
 22 show up, at some point after May 2, the payroll responsibility
 23 shifts from Labor Plus to Wynn, but there's no evidence they
 24 weren't actually working for Labor Plus on May 2, but let's go
 25 back to what we spent hours arguing about.

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1 The record seems to be clear that even on May 2, they were
 2 jointly employed by Labor Plus and the Wynn, because we know
 3 from the testimony that Labor Plus really was nothing more than
 4 a payroll service and that fact is conceded, because the
 5 commerce statement says that they were a payroll service and in
 6 the statement position, which is now required, the Employer
 7 doesn't contest jurisdiction, nor does it contest that
 8 description, and just to nail this down, the commerce
 9 stipulation, which Ms. LaRocca signed, which the Regional
 10 Director approved says the Employer, Labor Plus, LLC, is a
 11 Delaware limited liability company with an office and place of
 12 business in Las Vegas, Nevada is engaged in the operation of
 13 payroll services. Payroll services, Madam Hearing Officer.
 14 So they're not any -- they're not an employer in the sense
 15 of an employer where they have supervision and control. They
 16 act as a payroll service. They are a joint employer with the
 17 Wynn. That language concedes that.
 18 But, again, you don't have to reach that, because you
 19 could theoretically find that those four people remained
 20 employees of Labor Plus on May 2, because they weren't fired,
 21 they weren't terminated, they continued working at the same
 22 place, but you could also put that aside and say it's not
 23 determinative, and the Regional Director should count the
 24 ballots of everybody else, and we're 100 percent confident
 25 we'll win, overwhelmingly, and that won't be determinative,

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1 but, if not, you'll have to reach those other more difficult
 2 issues.
 3 So that relates to the challenge ballots and as to
 4 objections 1 or 2. The problem is that Ms. LaRocca, on behalf
 5 of her client, stipulated to the election. I mean objections 1
 6 and 2 are the region area holding the election on May 2,
 7 because none of the individuals in the petition for unit, and
 8 the expectancy of continued employment. And number 2 is the
 9 same. The fact is that Ms. LaRocca on April 24th, signed the
 10 election agreement, initialed every page, and the Regional
 11 Director approved it. She waived her right to make that
 12 argument on behalf of the client. That was the time to make
 13 it, not to sandbag the process and sign a stipulation for an
 14 election, and then come back and say, I should never have
 15 signed it. And, as I think you've made it clear, and I think
 16 we all recognize that, again, the Board's test here is who was
 17 employed as of May 2.
 18 Now, in the motion to dismiss, and I'm sure you'll read
 19 all the cases, because I read them all, every one of them dealt
 20 with the decision by the Regional Director or the Board to
 21 refuse to direct an election, because of the eminent and
 22 certain closure -- those are the words that they board has
 23 used. And so that happens from time to time, where the Union
 24 files a petition, and particularly when elections are delayed
 25 for long periods of time, the Employer will announce the

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1 eminent and certain closure of a facility and the Board's
 2 general rule is not to direct an election when that occurs.
 3 Well, obviously, as of April 24th, Labor Plus didn't think
 4 that it could prove the eminent and certain closure of this
 5 location, but they chose not to bother to try, but they didn't.
 6 They stipulated to an election.
 7 And so there's no case and, in fact, it's contrary to the
 8 statute to allow them to re-litigate that in an objections or
 9 challenged ballot hearing, because there's that basic principal
 10 for Mike O'Connor in subsequent cases that the Union's status,
 11 as the representative of the employees, arises on the moment at
 12 the time of the election.
 13 So when the election is finished, the Union is a
 14 representative, assuming we win, and the Employer acts at its
 15 peril in refusing to bargain with us and there's a document
 16 there that is showing that we've asked them to bargain, and
 17 they've taken the course of illegality in refusing to bargain.
 18 So once the election is conducted, assuming the
 19 certification issues, the proper route, if there is one for the
 20 Employer to challenge, is by refusing to bargain, committing an
 21 illegal act. That's the way you challenge a certification. So
 22 it's contrary to the statute now to say that the certification
 23 should be an issue because of a closure, because keep in mind
 24 that there's certain bargaining obligations that arise even if
 25 there's a closure, if you're going to call it that, because the

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| <p style="text-align: right;">Page 237</p> <p>1 Employer had an obligation to bargain with the Union beginning 2 on May 2, over the impact of the decision by the Wynn to 3 terminate the effects, and its failure and refusal to bargain 4 over the effects is subject to an 885 remedy under Transmarine, 5 but they also could have bargained about where the workers 6 would go. Would they go to other shops or other locations, 7 severance pay, things like that. That all arises on May 2. 8 The Employer doesn't have the right to continue to contest 9 the very stipulation that it entered into, a stipulation that 10 there would be an election on May 2, between 10 a.m. and 12 11 p.m., right in front of this building, with the agreed upon 12 election and with the agreed upon voter eligibility list. 13 Now, you don't see in the record that the Employer fussed 14 about this. It had a choice. It could have come out here, 15 gone to the hearing, and argued that to the Regional Director 16 in the hearing in this building. It chose not to do that. It 17 chose to stipulate to an election. So it's lost its chance to 18 make that argument. 19 All right. Now, we spent a whole day here, and I want to 20 just remind you the Employer has refused to provide to the 21 Hearing Officer some very critical documents, claiming 22 confidentiality. I made it clear that they could delete any 23 financial information, so I can't imagine what's confidential 24 about it. 25 But I just want to close by saying that we spent a lot of</p> | <p style="text-align: right;">Page 239</p> <p>1 appreciate Tony Smith's question of why was it that the Wynn 2 terminates this agreement two days after the petition is filed. 3 Now, the Employer witness says he has no idea, doesn't 4 know. To use a legal term, that's baloney. I would use 5 another word, but you would probably criticize me. They know 6 exactly why, but she just wasn't truthful about that, and we'll 7 deal with that in another forum. 8 So, in summary, it's our position that the challenged 9 ballots -- the challenge to the ballots should not be 10 sustained, it should be all overruled. We should issue a 11 report and remand it back to the Regional Director of Region 28 12 to count those ballots immediately and time is of the essence, 13 and that the objections -- the other objections should be 14 overruled. 15 I just want to note that objections 1 and 2, in my view, 16 are not proper objection and that's why we spent some time 17 talking about it, but that really relates to the stipulation 18 and the unit, which the Employer waived by stipulating to the 19 unit. And for those reasons, we hope that you will not grant 20 any further extension. The brief is due June 2. There's no 21 reason why you can't write the decision before that, throw the 22 brief away, because it will be useless anyway, but, in any 23 case, we'd like to see a decision on June 3rd, so we can move 24 forward. 25 HEARING OFFICER STROUP SCAFFIDI: Well, I appreciate you</p> |
| <p style="text-align: right;">Page 238</p> <p>1 time arguing about these joint Employers, but that's very 2 important, because the fact is there was a joint employer with 3 the Wynn, because Labor Plus is really just mostly a payroll 4 service. It sends workers over there, it pays them, it gets 5 reimbursed by the Wynn, but the Wynn schedules them, tells them 6 what to do, does all the traditional things the Employer does, 7 and Wynn is now the successor. 8 So the real fight here is largely with the Wynn. They're 9 not here, they don't have to be. We will, at the appropriate 10 point, ask them to bargain as the successor, either a perfectly 11 clear successor or a burned successor, but we need that 12 certification, because absent the certification, then the Wynn 13 can say there was no representative here, so that's why we're 14 here. 15 And don't take sympathy on the Wynn. Steve Wynn is a 16 multi-billionaire. If he had some problem, he could have been 17 here, and he certainly could have sent a representative. 18 Whether he knows or not about it makes no difference, because 19 there's no res judicata effect on the Wynn unless we show they 20 were joint employers, and we may do that in the long run. 21 So I, at one point, suggested that it would have been 22 Labor Plus's interest to simply withdraw the objection, let the 23 certification issue. I don't know why they're spending a lot 24 of money fighting over this. I guess that Steve Wynn slipped 25 them a few dollars, but we don't know, and I very much</p> | <p style="text-align: right;">Page 240</p> <p>1 managing my time. I do. 2 MR. ROSENFELD: I am. I'm managing your time, because I 3 know this is important. It's important to the workers. 4 HEARING OFFICER STROUP SCAFFIDI: Absolutely. I have no 5 interest in delaying this. 6 MR. ROSENFELD: And in my view this is all a delay to 7 begin with, because this is all frivolous, and that's why I 8 think it's a form of worker terrorism for employers to do this 9 in this right to share a state, but we'll deal with it 10 appropriately. So I'm asking you to issue a prompt decision. 11 Thank you. 12 HEARING OFFICER STROUP SCAFFIDI: Okay. And you're still 13 planning to brief? 14 MR. G. SMITH: Yes, ma'am. 15 HEARING OFFICER STROUP SCAFFIDI: -- on June 1st. Can you 16 tell me what the length of the transcript is at this point? 17 THE COURT REPORTER: You'll receive it in three days 18 unless you'd like a daily copy. 19 HEARING OFFICER STROUP SCAFFIDI: What's the length of it? 20 How many pages? 21 THE COURT REPORTER: Oh, I don't know -- I won't know that 22 until I upload all the audio at the end, and then send -- it's 23 sent. 24 MR. ROSENFELD: What do you mean by daily? We can get it 25 tomorrow?</p> |

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| <p style="text-align: right;">Page 241</p> <p>1 THE COURT REPORTER: Uh-huh. If I order it by 6, you'll 2 get it tomorrow by 10 a.m. 3 MR. ROSENFELD: Okay. 4 HEARING OFFICER STROUP SCAFFIDI: Okay. Are there any 5 other issues that need to be addressed? 6 THE COURT REPORTER: It's going to be a big transcript, 7 because it was an all-day hearing. 8 HEARING OFFICER STROUP SCAFFIDI: Okay. 9 MR. T. SMITH: The only thing I would add is that I passed 10 out, while counsel was making closing arguments, the Regional 11 Director's Exhibits 2, 3, and 4. I have the originals that Mr. 12 Johnson had up here if there's any doubt as to the 13 authenticity, whether or not it's an accurate copy. 14 I would note that as far as the no election at the voting 15 place exhibit, I did have to put it on two different pages, but 16 it's a continuation of the same document, and they're both 17 labeled. 18 HEARING OFFICER STROUP SCAFFIDI: Any issue with the copy 19 or the copies? 20 UNIDENTIFIED SPEAKER: Not from me. 21 MR. ROSENFELD: Yes, my issue is it wasn't done by a Union 22 copier, but -- 23 HEARING OFFICER STROUP SCAFFIDI: Again, you'll have to 24 take that up with Mr. Griffin. 25 MR. ROSENFELD: I will.</p> | <p style="text-align: right;">Page 243</p> <p>1 CERTIFICATION 2 This is to certify that the attached proceedings before the 3 National Labor Relations Board (NLRB), Region 28, Case Number 4 28-RC-150168, Labor Plus, LLC and International Alliance of 5 Theatrical Stage Employees and Moving Picture Technicians, 6 Artists and Allied Crafts of the United States and Canada, 7 Local 720 at the National Labor Relations Board, Region 28, 600 8 Las Vegas Boulevard South, Suite 400, Las Vegas, Nevada 89101, 9 on Wednesday, May 27, 2015, at 10:30 a.m. was held according to 10 the record, and that this is the original, complete, and true 11 and accurate transcript that has been compared to the reporting 12 or recording, accomplished at the hearing, that the exhibit 13 files have been checked for completeness and no exhibits 14 received in evidence or in the rejected exhibit files are 15 missing. 16 17 18 19 JENNIFER GEROLD 20 Official Reporter 21 22 23 24 25</p> |
| <p style="text-align: right;">Page 242</p> <p>1 HEARING OFFICER STROUP SCAFFIDI: Okay. All right. Well, 2 if there's nothing further, then the hearing will be closed. 3 Okay. The hearing is closed. Thank you. 4 (Whereupon, the hearing in the above-entitled matter was closed 5 at 5:17 p.m.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> | |